

**Testimony of David Wolfe, Creative Director
Doneger Creative Services**

**Before the
U.S. House Subcommittee on Courts, the Internet, and Intellectual
Property
U.S. House of Representatives Committee on the Judiciary**

**Legislative Hearing On H.R. 5055:
“To amend title 17, United States Code, to provide protection for
fashion design”**

**Washington, DC
July 27, 2006**

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Chairman Smith, Ranking Member Berman, members of the subcommittee, my name is David Wolfe. I am Creative Director for Doneger Creative Services, the Doneger Group’s trend and color forecasting and analysis department. In my role as Creative Director, I analyze men’s, women’s and youth apparel and accessories markets as well as big-picture developments in style, culture and society. I want to thank the subcommittee for inviting me to testify on the proposed copyright for fashion design.*

Over the past century, the fashion industry in America has thrived because of, and not in spite of, a lack of copyright protection for fashion designs. The fashion industry is a well balanced system which succeeds by smoothly, quickly and profitably integrating a complicated blend of original ideas, individual creativity and copying. Fashion designers draw on a wide array of influences from society, history and one another, making it virtually impossible to determine the originality of a given design. Copyright for fashion design is antithetical to this process. For these reasons, H.R. 5055, or any other legislation that provides copyright protection to fashion design, could not be enforced fairly, would create litigation that would slow the pace of the industry and would increase costs for the industry, retailers and consumers.

Attached to my testimony is a copy of the book, *Ready to Share: Fashion & the Ownership of Creativity*, which contains essays examining the relationship between creativity and intellectual property law in fashion. The book is a product of a conference sponsored by the Norman Lear Center at the University of Southern California’s Annenberg School of Communication and attended by fashion designers, fashion analysts, journalists, and academics.

The Lack of Originality in Fashion Makes Copyright Protection a Poor Fit

Copyright law in this country is premised on protecting originality, but finding and defining originality in fashion is an extremely difficult if not impossible task. Fashion trends today follow our shifting society; they are not invented on a runway. The runway reflects what is happening in our world. Economics, politics, weather, media, celebrities, demographics, sex and science all influence trends. All designers feed off of this same information and inspiration, and hopefully interpret it in their own unique way.

* I would like thank Public Knowledge intern Sarah Zenewicz for helping me with this testimony.

For example, movies are highly influential to the fashion industry. Faye Dunaway's costumes in *Bonnie and Clyde* influenced American women to wear longer "midi" skirts after the miniskirt trends of the 1960's. Kimono-inspired clothing began appearing on runways after the release of *Memoirs of a Geisha*. The *New York Times* recently published a story discussing the influence the television series *Miami Vice* had on fashion: "The extent to which the show played a part in the sartorial recasting of the American man is difficult to overestimate."

Originality in fashion design is questionable when designers are explicitly influenced by so many sources. There was little originality in the "midi" skirts that became popular in the 1970's because those designers were inspired by the costumes in *Bonnie and Clyde*, which were in turn inspired by the fashion of the 1920's. If a designer today can be influenced by *Miami Vice* and produce a pastel suit reminiscent of Don Johnson's 1980's attire, much like kimono-inspired fashion became ubiquitous on the runways after *Memoirs of a Geisha*, then it should be readily apparent that assigning originality in fashion is a great challenge.

Because it is so difficult to determine what is "original" about a particular fashion design, it would be equally difficult to enforce a copyright fairly. For example, bestowing copyright to a designer for the "little black dress," ubiquitous in the wardrobe of every woman who attends cocktail parties or concerts, would be unfair because there is no originality in a design for the little black dress. Designer Coco Chanel is credited with introducing the dress in 1926 as a symbol of urban sophistication, and every designer for the past eighty years has copied, reinterpreted, and reintroduced the dress.

The Fashion Industry Has Thrived and Continues to Thrive in the Absence of Copyright

Fashion has always operated without copyright protection in the United States. The absence of copyright in fashion frees designers to incorporate popular and reemerging styles into their own lines without restricting themselves for fear of infringement, thus facilitating the growth of new trends. The fashion industry benefits from the constant creation of new trends because new trends are what induce consumers to continually buy. The result is an industry that in 2005 had revenues of \$19.5 billion.

Fashion designers influence each other and appropriate each others' designs into their own lines. Chanel created her influential Chanel Jacket that fashion designers at all levels have copied and redesigned from its release in 1916 until today. Chanel's influence for the jacket came from men's jacket designs of the time. The influence of Chanel's jacket can be seen in designs for the past 90 years from Karl Lagerfeld, Adolfo, St. John, BCBG and H&M. Designs are copied, and they morph and change over time, and so-called "original" ideas often originate in the designs of others.

Designs and ideas that become popular in fashion do not always come from the design studios of haute couture (high fashion for a wealthy clientele), but trends can also work from the bottom up. Fashion designer Diane von Furstenberg once said, "Everything in fashion begins in the street." While this is something of an overstatement, it does illustrate the point that fashion

appropriates from all levels of the design world. Designer Mary Quant is credited with being the inventor of the miniskirt, yet Quant denies being the inventor. She says she looked out her window in Chelsea, saw what was happening on the streets, and picked up on what was in the air. Copying in fashion design is about incorporating influences from all around, and it is not just about creating a \$200 knock-off of a \$2,000 dress.

Copying and appropriation creates trends that are beneficial to designers, retailers and consumers. A designer who introduces or reintroduces an idea benefits by inducing more consumers to buy as the trend spreads. The designers who copy, appropriate and reinterpret benefit because they can take an idea, make it their own and create competition in the fashion marketplace. Consumers benefit because they have more choices. A consumer may not like an original design, but may be inclined to purchase a reinterpretation. Fashion thrives when trends can spread from haute couture to sales racks and everything in between because consumers have more choices. Consumers with more choices are more likely to find clothing that fits their tastes or price range, and designers and retailers are more likely to profit.

H.R. 5055 Would Be Detrimental to the Fashion Industry, Retailers and Consumers

H.R. 5055 would provide fashion designers a three year monopoly over a fashion design and any design “substantially similar” to it. Copyright protection for fashion designs would harm the thriving fashion industry, retailers and consumers. Specifically, I urge you to oppose H.R. 5055 for the following reasons:

- Copyright protection would cause delays because it would create litigation, injunctions and licensing. Delays would stunt the development of trends, and ultimately the fashion industry, as disputes would outlast the attention span of the fashion market.
- Determining originality in fashion design is virtually impossible, and thus it would be virtually impossible for judges to effectively and fairly enforce the law.
- The legislation would ultimately decrease the amount of choices available to consumers, and would dramatically increase costs for the fashion industry and retailers.

Delays from litigation, injunctions and licensing would stunt the fashion industry

Copyright protection would slow the rapid pace of the fashion industry, which is what makes it profitable. As a result the industry for the first time would be subject to the risk of infringement litigation. Fashion designers would be held up with the time and expense of depositions, injunctions, trials and the negotiations. H.R. 5055 would create a morass of litigation that will hinder rather than encourage creativity in fashion design. Rather than efficiently creating new fashion designs for the market, designers will be trapped in the perpetual chaos of trying to defend the copyright on existing designs while planning and producing designs for the future. The lifespan of a legal dispute is longer than the attention span of the fashion

industry. By the time a design is determined to be or not be infringing, the marketplace will have moved on and new trends will have emerged.

This subcommittee knows well that the content and technology industries are constantly at odds on issues of infringement, secondary liability, injunctions, and negotiations of licensing terms. These issues will exponentially complicate business arrangements between designers and retailers and increase the time necessary to produce new clothing lines and develop trends. With a copyright in place, many trends that would have developed in the marketplace as it exists today will never develop, which in turn will remove the incentive for consumers to make purchases.

A fashion copyright would be virtually impossible to enforce fairly because of the lack of originality in fashion.

As I discuss on page 2, a fashion copyright that grants monopoly to a design and any design that is “substantially similar” could not be enforced fairly or efficiently because determining the originality of a design is nearly impossible. Designs that may seem “original” during a current fashion cycle may be a slight reinterpretation of a previous design. Because fashion relies on appropriation and merely modifying existing ideas, it would be impracticable for the government to confer fashion designers a copyright monopoly on a design.

Because defining and determining originality is difficult enough for those who work in and study the fashion industry; it would be just as difficult for a court. If a court cannot determine the originality of a design, then how could it fairly determine whether one design infringes upon another or whether a design is substantially similar or whether a design is sufficiently original to qualify for copyright protection? Would a court be forced to measure the width of the lapels on a tuxedo jacket, the width of spaghetti straps on a cocktail dress, the similarity of pastels of a suit? Or the originality in the length of a skirt, the cut of a men’s button-down dress shirt, or in the number of straps on a pair of gladiator-style sandals?

A fashion copyright would increase costs for designers and retailers and would decrease choices for consumers.

A copyright would give designers unprecedented monopolies over fashion designs and any reinterpretations thereof, which would complicate the business of fashion even more. Negotiating licensing, the risks—and reality—of litigation and constant internal debates over infringement and originality would create a higher cost of doing business for designers. Designers would become more cautious and conservative in their designs for fear of creating a design that infringes on another. Ultimately, they would have to account for the costs of licensing and the risk of infringement litigation in their pricing, and pass these costs on to consumers. The end result for consumers will be fewer choices, higher prices or both.

It is important to note that fashion design is not entirely without intellectual property protection. Indeed, patent and trademark law offer limited protection for fashion designs. Design patents protect the ornamental features of an invention that can be separated from the functional aspects. Few fashion designs meet the qualifications for a design patent, but some areas of the fashion industry, such as athletic shoes, have been able to take advantage of the protection.

Trademarks are the symbols that identify the origins of a product, and are an important way for designers to distinguish their brands from others. Fashion designers can use trademark law to protect their brand and distinguish their goods from knock-offs and limit consumer confusion. For example, while a designer may be able to copy Gucci, Prada or Louis Vuitton hand-bags, that designer may not use the Gucci, Prada, or Louis Vuitton trademarks on his own versions.

Conclusion

Chanel once said, “Fashion should slip out of your hands. The very idea of protecting the seasonal arts is childish.” While she died over thirty years ago, this is no less true today. Extending copyright protections to an industry that thrives on a rapidly changing marketplace, where originality is difficult to determine and designers are constantly influenced by each other and the world would cause more harm than good. Fashion is ephemeral and must move faster than the hindrances that would accompany copyright: time and resources necessary to negotiate licensing deals, to determine the substantial similarity of two garments or to assess the overall originality of a design. The fashion industry has thrived in the absence of copyright as a well balanced system of appropriation, copying and originality. It will continue to do so only if we maintain the current system.

Thank you. I look forward to your questions.

“LESSER ARTISTS BORROW. GREAT ARTISTS STEAL.”

—Igor Stravinsky

“GOOD ARTISTS COPY. GREAT ARTISTS STEAL.”

—Pablo Picasso



READY TO SHARE:
FASHION & THE OWNERSHIP OF CREATIVITY

EDITED BY
DAVID BOLLIER AND LAURIE RACINE

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READY TO SHARE:
FASHION & THE OWNERSHIP OF CREATIVITY

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EDITED BY
DAVID BOLLIER AND LAURIE RACINE

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▶ Inspired by 1950s' fashion, a white-on-black silk gazar dress by Kevan Hall brings the past into the present.



PARTICIPATING ORGANIZATIONS

THE USC ANNEBERG NORMAN LEAR CENTER

The Norman Lear Center is a multidisciplinary research and public policy center exploring implications of the convergence of entertainment, commerce and society. On campus, from its base in the USC Annenberg School for Communication, the Lear Center builds bridges between schools and disciplines whose faculty study aspects of entertainment, media and culture. Beyond campus, it bridges the gap between the entertainment industry and academia, and between them and the public. Through scholarship and research; through its fellows, conferences, public events and publications; and in its attempts to illuminate and repair the world, the Lear Center works to be at the forefront of discussion and practice in the field. For more information, visit www.learcenter.org.

CREATIVITY, COMMERCE & CULTURE

When art is created for commercial purposes, who owns it? Once it's in the hands of consumers, what rights do they have to change it? Headed by Lear Center senior fellows David Bollier and Laurie Racine, the Creativity, Commerce & Culture project explores the new digital environment and the impact of intellectual property rights on innovation and creativity. The project is funded in part by a generous gift from the Center for the Public Domain, a non-profit foundation that supports the growth of a healthy and robust public domain by establishing programs, grants and partnerships in the areas of academic research, medicine, law, education, media, technology and the arts.

THE FASHION INSTITUTE OF DESIGN & MERCHANDISING/FIDM

The Fashion Institute of Design & Merchandising/FIDM is an internationally recognized college that prepares students for leadership in the global industries of Fashion, Visual Arts, Interior Design and Entertainment. As an accredited institution granting Associate of Arts degrees and providing Advanced Study programs in 14 industry-specific majors, FIDM has equipped more than 30,000 students over the last 30 years to become skilled professionals. FIDM is headquartered in a state-of-the-art campus in downtown Los Angeles, with additional campuses in Orange County, San Diego and San Francisco. The FIDM Museum houses one of the nation's finest costume collections dating from the 18th century, as well as ethnic costumes and selections from top fashion designers. For more information, visit www.fidm.edu. ♦



BY DAVID BOLLIER AND
LAURIE RACINE

◀ Kevan Hall talks about
the influence of his
muse, Millicent Rogers,
on his designs.

INTRODUCTION

This book is an exploration into creativity — how it originates in our society, the means by which it circulates from one person to another, and the role that intellectual property law plays in encouraging or impeding the flow of creativity. One of the most instructive arenas for studying these themes, we discovered, is the fashion industry.

Fashion has the virtue of being ubiquitous, with a creative narrative that is familiar and easy to comprehend. It is at once personal, visual, historical, evolving and completely inescapable. Fashion offers us a compelling story arc for understanding how creativity works from its inception, as an inspired idea, through the creative process and into the marketplace.

To document and explore this journey, the Norman Lear Center at the USC Annenberg School for Communication held a conference titled “Ready to Share: Fashion & the Ownership of Creativity” in January 2005. We brought together top fashion designers, industry analysts, retailers, attorneys, copyright scholars, songwriters, musicians, high-tech experts and others to talk about the complicated ecology of creativity in fashion. The hypothesis was that the tradition of open appropriation and transformation in fashion contributes significantly to that industry’s creative vitality and economic success.

Fashion seems to draw its life’s breath from a creative and cultural commons — a shared pool of artistic design and cultural references that is constantly changing and churning in all sorts of novel, unpredictable ways. In this sense, fashion resembles the creative genres of the Internet — or

more precisely, those genres resemble fashion, which in its modern form has been around for decades.

To venture onto the World Wide Web is to enter a zone of recombinant creativity, a place where the differences between originality and imitation are often difficult to discern. There are many brilliant individuals, to be sure, each of whom adds original verve to writing, music and visual works. But what may most distinguish the online world is how the collective origins of new ideas are more readily apparent. A creative fragment from one Web site often is added to another, and mixed with a third — much as mash-up artists like Danger Mouse have combined the music of Jay-Z and The Beatles with improbable success. Bricolage is the order of the day.

In fact, the French term bricolage lies at the heart of the matter. Bricolage refers to the recombinant process in which everything gets mixed and morphed, and incongruous elements are synthesized into something new. The term seems to describe perfectly the creative processes of fashion, where most everything that ever has been designed is considered fair game for new creations. The intellectual property restrictions on bricolage in fashion are nearly nonexistent.



Unlike the online culture, however, modern fashion has been practicing its brand of bricolage for decades. The means by which vintage clothing is plundered for new ideas are fairly well-established. We can examine the diversified market ecology that popularizes haute couture at lower price points and, simultaneously, elevates open “street fashion” into high-priced designer styles. Fashion gives us a window into the tension between the open commons and the proprietary market. It helps us understand both the contradictions and the synergies between the two, and how each is indispensable to the other. Looking at creativity in fashion gives us a richer, more complex appreciation for the meaning of “originality” and the importance of imitation in all creative endeavors.

This naturally led us to wonder — how can an industry built upon open borrowing and re-use of other people’s work thrive financially? Doesn’t this contradict one of the core premises of the traditional narrative for intellectual property — that strict property rights are critical in order to reward creators for coming up with new works and selling them in the marketplace?

We conclude that a complex matrix of factors affects creativity and economic sustainability in fashion. Intellectual property rights, including copyright and trademark protection, are certainly important in spurring creativity. But many social, technological and historical elements also affect how creativity unfolds and circulates. One of the most important

questions, as the title of our conference suggests, is whether creative design is “ready to share.” The history of fashion suggests that it is. Fashion designers routinely appropriate and transform prior works, generating innovations that reflect both their individual talents and different times and contexts.

The first essay in this volume, “Between the Cracks, a Fertile Commons: An Overview of the Relationship Between Fashion and Intellectual Property,” by intellectual property attorney Christine Cox and Duke Law professor Jennifer Jenkins, offers an overview of the relationship between fashion and intellectual property. Drawing upon fashion history and congressional statutes, this article is a primer in the legal treatment of creativity in fashion. The authors explain why fashion design generally is not protectable under copyright law, design patent, trademark or trade dress law.

A second essay, “Ready to Share: Creativity in Fashion & Digital Culture,” by David Bollier and Laurie Racine, senior fellows at the Norman Lear Center, builds on the first piece by looking at the social and intergenerational dynamics of creativity in fashion, and how shared traditions and designs play an indispensable role in driving new creativity.

The authors wonder why the “borrowing” that is considered standard practice in fashion should be denounced as “theft” when it occurs in music or film. How is it that sampling the



1. Norman Lear and Michael Patrick King discuss the impact of intellectual property restrictions on specific creative decisions in their TV shows.

2. FIDM’s Barbara Bundy highlights the energy of the conference.

How can an industry built upon open borrowing and re-use of other people’s work thrive financially?

designs of someone else’s garment can be lauded as genius in fashion, but condemned as piracy in other creative fields? Much of the answer seems to lie in the willingness of fashion companies to acknowledge the larger ecology of innovation — a frame of analysis that traditional copyright law omits. Intellectual property law tends to ignore the fact that creativity in real life must germinate within communities of practice and creative traditions — and that privatizing those communities and traditions only diminishes the feedstock of future creativity. Rare among creative sectors, fashion frankly acknowledges that there is little that is wholly original or unprecedented. Timing and context are at least as important as the originality that a designer contributes.

In the final essay, “Music & Fashion: The Balancing Act Between Creativity and Control,” Aram Sinnreich and Marissa Gluck, two former research analysts for Jupiter Research, explore the fascinating parallels and differences between creativity in music and fashion. The culture of fashion is far more accepting of appropriation and imitation than the music industry, which relies upon strict copyright protection and fierce litigation to prevent the smallest forms of unauthorized copying.

Since we believe the topic of creativity and ownership in the fashion industry deserves greater scrutiny, this volume includes an annotated bibliography prepared by Norman Lear Center researcher Patrick Reed. The wealth of articles and books listed in this far-ranging bibliography features

some of the leading works in this emerging arena. The bibliography also includes works about the relationship of fashion to the entertainment industry.

Some of the most exciting insights about fashion and creativity emerged from the “Ready to Share” conference itself, which was funded in part by a generous gift from the Center for the Public Domain and sponsored by The Fashion Institute for Design & Merchandising/FIDM. Included with this book is a stand-alone DVD. The video incorporates highlights of the conference — including comments by producer Norman Lear, designer Tom Ford, *New York Times* reporter Guy Trebay, *Sex and the City* creator Michael Patrick King and recording artist Danger Mouse — with a walking tour of New York fashion. Hosted by journalist Rick Karr with special guest, David Wolfe, Creative Director of the Doneger Group, we interweave an on-the-ground look at fashion with the “Ready to Share” conference themes.

David Wolfe, one of the industry’s foremost trend forecasters, exposed fashion as a kind of “fragile ecosystem” of styles and motifs, tracing some of the significant historical shifts in fashion design and markets over the past 75 years.

Tom Ford’s illuminating conversation with *New York Times* reporter Guy Trebay centered on whether fashion is derivative at its core or an original art form. Using examples from various designers, Ford and Trebay talked about the necessity of personal interpretations, and brand identity and its

“Fashion is not something that exists in dresses only. Fashion is in the sky, in the street, fashion has to do with ideas, the way we live, what is happening.”

— Coco Chanel

coexistence with pervasion appropriation and sharing. A panel on the ownership of music applied the themes of “ready to share” to musical creativity and sampling. Moderated by Jonathan Taplin, the panel featured mash-up artist Danger Mouse, musician and producer T Bone Burnett, The Roots’ producer Richard Nichols, singer-songwriter Sam Phillips and archivist Rani Singh. The group discussed how digital technologies have radically changed the distribution of music, giving artists the potential for much greater control over their business affairs and greater ability to reap economic gains directly.

Los Angeles designer Kevan Hall presented his Spring 2005 collection as part of a dialogue with Kevin Jones, curator of The Fashion Institute of Design & Merchandising Museum, about the direct influence of previous designers and even other arts, such as watercolors paintings and photographs, on his contemporary designs. Hall explained how his collection paid homage to the grand style and simple design sense of heiress Millicent Rogers of the 1930s and to the hand-tinted photographs of artist Cecil Beaton.

Television writer-producer Norman Lear delved into the nature of creative risk-taking with Michael Patrick King, executive producer of *Sex and the City*. Each worked in a different decade and with different networks — Lear for CBS in the 1970s, King for HBO in the 1990s — but each recounted episodes in which intellectual property restrictions threatened to derail their creative plans. King also

spoke about the special challenges of writing a show in which fashion itself served as a kind of “character” in addition to the four female leads.

It is impossible to sum up a field of inquiry that is still unfolding and fraught with open questions and speculative answers. Still, several important insights emerged from the “Ready to Share” conference and the commissioned essays.

First, it is clear that creativity critically depends upon its social context and the collective legacy of prior works. Access to previous creativity is as important as control over any commercial product. What matters most is striking a careful balance between access and control, so that excessive restriction — especially through intellectual property law and technology — does not choke off future creativity.

A second insight is that thriving markets of creative products require an open commons of “raw material” — old works, unowned words and images, freely accessible characters, plots and themes — to assure fresh and robust creativity. Again, balance is key. Creators must have the means to earn money for their work, but an overdeveloped marketplace that encloses the commons is likely to undermine the quality and vigor of its creativity over time.

Finally, our explorations of creativity in fashion suggest that we may have to modify our ideas about individual originality. Many social, community and intergenerational



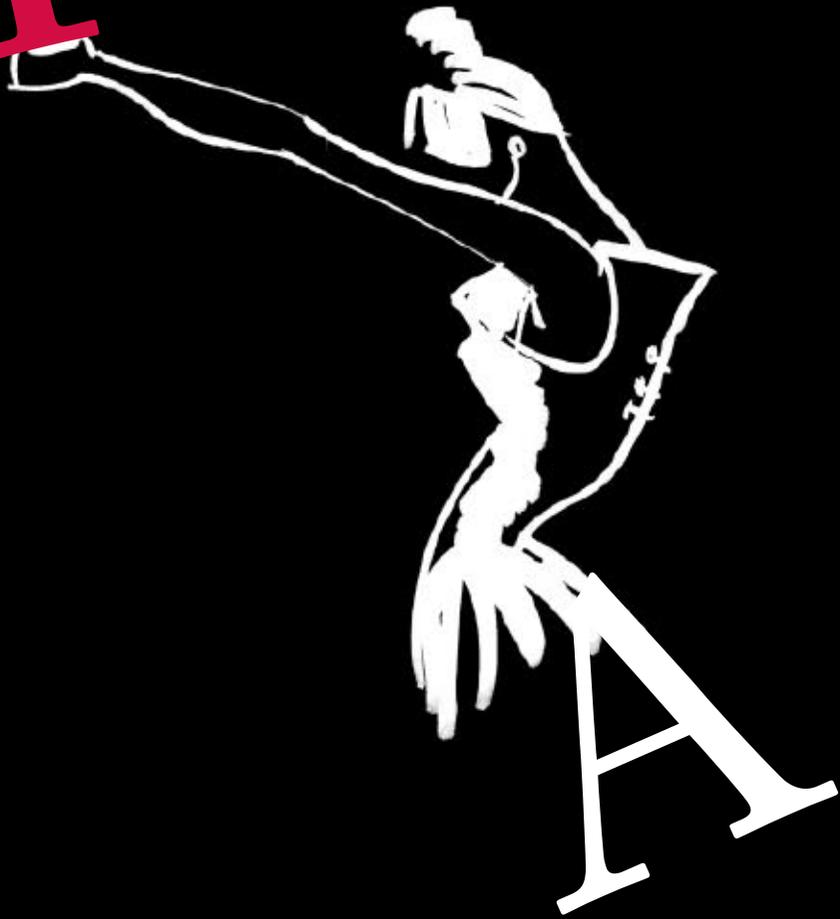
▲ Which one is the real Chanel jacket? “Knocking off” a classic design is common in the fashion world.

factors play vital roles in the creative process. These must be acknowledged. Moreover, the grand narratives of law that purport to describe how creative works emerge and circulate must take account of these factors. The law must recognize that both artistic and economic success depend upon access to an open, nonproprietary universe of unowned material.

Although the tradition of “ready to share” is more evident in the fashion world, its dynamics can be seen in nearly any field whose creativity occurs in a collective, social context. The progress of science, for example, has always depended

on the ability of researchers to build upon the prior work of others. Innovators in music and film always have drawn freely from the styles of prior artists and traditions. By focusing on a fact that intellectual property law largely discounts — that appropriation, sharing and transformation are critical elements in the eternal dance of creativity — the “ready to share” paradigm offers some provocative new ways to understand how creativity and markets alike can remain fresh and robust. For this reason alone, the deeper character of the “ready to share” model deserves much greater investigation and discussion in the years ahead. ♦

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RE

ESSAYS



► The original and its interpretation are revealed in “Chanel or Fauxnel,” a live fashion presentation at the “Ready to Share” event.

BY CHRISTINE COX
AND JENNIFER JENKINS

BETWEEN THE SEAMS, A FERTILE COMMONS:

AN OVERVIEW OF THE RELATIONSHIP BETWEEN FASHION AND INTELLECTUAL PROPERTY

“Imagine for a moment that some upstart revolutionary proposed that we eliminate all intellectual property protection for fashion design. No longer could a designer secure federal copyright protection for the cut of a dress or the sleeve of a blouse. Unscrupulous mass-marketers could run off thousands of knock-off copies of any designer’s evening ensemble, and flood the marketplace with cheap imitations of haute couture. In the short run, perhaps, clothing prices would come down as legitimate designers tried to meet the prices of their free-riding competitors. In the long run, though, as we know all too well, the diminution in the incentives for designing new fashions would take its toll. Designers would still wish to design, at least initially, but clothing manufacturers with no exclusive rights to rely on would be reluctant to make the investment involved in manufacturing those designs and distributing them to the public. The dynamic America fashion industry would wither, and its most talented designers would forsake clothing design for some more remunerative calling like litigation. All of us would be forced either to wear last year’s garments year in and year out, or to import our clothing from abroad. Of course, we don’t give copyright protection to fashions ... We never have.”

— Jessica Litman, *Digital Copyright*¹

INTRODUCTION

Each month, *Marie Claire* magazine presents a feature devoted to fashion knockoffs called “Splurge vs. Steal.” A \$195 Lilly Pulitzer halter top is compared with a \$15.00 version by Newport News.² \$175 Theory shorts are juxtaposed with a \$39.50 look-alike from the Gap.³ Though the designer version usually looks more tasteful or well-made, many shoppers are quite happy to obtain “the look” while saving several hundred dollars. Newport News and the Gap can adapt the more expensive designs, and consumers can “dress for less,” because clothing designs generally are not

protectable under current United States intellectual property regimes.

We often are told that intellectual property protection is necessary to stimulate creativity and innovation. It provides incentives by allowing creators to control access to their works and demand payment for them. Without these incentives — the argument goes — people will be unable to profit from their works and will stop creating. Yet, despite the lack of intellectual property protection for fashion, style houses continue to make money, and designers continue to

Fashion designs, particularly for clothing, fall between the seams of traditional intellectual property protections.



▲ The classic shirtdress, revisited.

develop new looks every season. Creativity thrives in the absence of intellectual property protection.

What can we learn from this seeming paradox? This paper will examine the reasons why fashion design generally is not protectable under existing intellectual property regimes, and consider how the fashion experience might inform ongoing debates about desirable levels of intellectual property protection in other creative industries.

WHY NOT FASHION?

In recent years, the scope of U.S. intellectual property protection has expanded greatly in a variety of fields. Patents now are granted over plant varieties and common business methods, areas for which the U.S. Patent and Trademark Office previously had been hesitant to issue protection. Copyright terms have been extended to a staggering length of time — life plus 70 years — far longer than the 14-year term originally contemplated by the drafters of the Constitution. Powerful industry lobbies continue to push for ever stronger intellectual property protections.

Despite these recent expansions that have benefited, among others, the biotech, pharmaceutical, movie and recording industries, the fashion industry receives little protection under current U.S. intellectual property laws. This is not to say that certain fashion houses have not tried to obtain intellectual property protections for their designs, for valiant efforts have been made in this regard. While these efforts have succeeded in protecting limited design elements, however, fashion design as a whole receives little to no protection. Knockoff goods are a huge part of the fashion industry and are accepted as common practice. With a system that tries its best to forbid sampling and remixing at every turn, how can such an extensive and fertile commons be allowed to exist?

Fashion designs, particularly for clothing, fall between the seams of traditional intellectual property protections.⁴ Copyrights generally are not granted to apparel because articles of clothing, which are both creative and functional, are considered “useful articles” as opposed to works of art. Design patents are intended to protect ornamental designs, but clothing rarely meets the demanding criteria of patentability, namely novelty and nonobviousness. Trademarks only protect brand names and logos, not the clothing itself, and the Supreme Court has refused to extend trade dress protection to apparel designs. Congress repeatedly has declined to enact legislation that would provide *sui generis* design protection.

Fashion designs are not unprotected merely because they fall into a legal limbo between intellectual property schemes, however. Both policymakers and courts have been guided by compelling policy reasons to limit design protection.⁵ They have expressed concerns that, while such protection might benefit certain designers, it could create monopolies in the fashion industry that would stifle the creativity of future designers, hinder competition and drive up prices for consumer goods. Designers could demand payment for design elements that currently are free, and this cost would be borne by others in the industry and by the public. The less affluent would not be able to afford the range of fashions they currently enjoy.⁶ Therefore, policy advisors have been unconvinced that “new protection will provide substantial benefits to the general public which outweigh removing such designs from free public use.”⁷ As one judge put it, “Congress and the Supreme Court have answered in favor of commerce and the masses rather than the artists, designers and the well-to-do.”⁸

COPYRIGHT

Copyright law is used to protect artistic creations, including music, films, paintings, photographs, sculptures and books.⁹ While U.S. copyright law protects “applied art,” such as artistic jewelry, patterns on dinnerware or tapestries, it does not protect “useful articles,” such as automobiles or television sets that, while attractively shaped, are primarily functional.¹⁰ Apparel designers have tried to obtain copyright protection for their designs by suggesting that clothing is a type of sculptural work. However, copyright law generally has not provided protection for wearable designs because clothing is considered a useful article that (among other things) protects its wearer from the elements, provides modesty and decorates the body.

While copyright law normally does not protect useful articles, it does protect aesthetic elements of a useful article if those features amount to works of art “that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.”¹¹ This “separability” rule was developed in the landmark 1954 case of *Mazer v. Stein*,¹² in which the Supreme Court held that Balinese statuettes that formed the bases of lamps were copyrightable because the aesthetic work in question (a statuette) was separable from the useful article (a lamp). The statuettes could be copyrighted as independent works of art even though they also could be used as lamp bases.¹³

While lamps with statuette bases offer a relatively easy example of separability, it is much more difficult to separate aesthetic elements of most fashion designs, particularly clothing designs, from their function. An unusual neckline, flared sleeve or cinched waist — while attractive and

creative — serve the utilitarian function of dressing the human form, and are not likely to be considered separable and independent works of art.

Accordingly, both Congress and the courts have said that clothing design is not subject to copyright protection. The legislative history to the Copyright Act explicitly stated that copyright protection would not be extended to “ladies’ dress” unless it had some element that was physically or conceptually distinguishable from its form.¹⁴ And courts have “long held that clothes, as useful articles, are not copyrightable.”¹⁵

There have been a few unusual cases involving fashion designs in which courts have found aesthetic form separable from function. One such case, *Kieselstein-Cord v. Accessories by Pearl*, involved the design of high-end belt buckles.¹⁶ Registered with the Copyright Office as “original sculpture and design,” the Kieselstein-Cord belt buckles widely were recognized as innovative jewelry designs and even made their way into the Metropolitan Museum of Art’s permanent collection.¹⁷ Knockoffs of the belt buckle designs subsequently were created in common metals by Accessories by Pearl, and Kieselstein-Cord sued for copyright infringement.¹⁸

The district court found that the belt buckles did not meet the separability standard required for protection because the artistic features were not separable readily from the utilitarian buckle.¹⁹ The Second Circuit reversed the decision, noting that the separability standard does not require “physical” separability but also may include “conceptual” separability.²⁰ The notion of conceptual separability (which was introduced in the legislative history to the current Copyright Act), allowed the *Kieselstein-Cord* court to discern between the aesthetic design of the belt buckles and their utilitarian function. The court concluded that the separable aesthetic elements should be copyrighted:

We see in appellant’s belt buckles conceptually separable sculptural elements, as apparently have the buckles’ wearers who have used them as ornamentation for parts of the body other than the waist ... Pieces of applied art, these buckles may be considered jewelry, the form of which is subject to copyright protection.²¹

However, the Second Circuit retreated from its expansive reading of conceptual separability a few years later in *Carol Barnhart v. Economy Cover Corp.*, in which the court held that mannequins

used to display clothing were merely useful articles and did not have aesthetic elements that were conceptually separable from their utilitarian functions.²²

In rare cases, an apparel design may be copyrightable as a separable work of art when it hardly functions as clothing at all. For example, one court found that a clear plastic swimsuit filled with crushed rock and displayed as part of a modern art exhibit could be copyrightable as soft sculpture:

Nothing in our legal training qualifies us to determine as a matter of law whether [the swimsuit] can be worn as an article of clothing for swimming or any other utilitarian purpose. We are also unable to determine merely by looking at [the swimsuit] whether a person wearing this object can move, walk, swim, sit, stand, or lie down without unwelcome or unintended exposure.²³

As one commentator observed, “given that the object was filled with crushed rock, one wonders if it might have been more ‘useful’ as an anchor than a swimsuit.”²⁴ Another court upheld copyrights in certain costumes that were unsuitable as clothing — these included a “Rabbit In Hat” costume that “does not readily permit the wearer to sit, recline, or maneuver easily” and a “Tigress” costume that “cannot be worn without a separate body covering underneath as it is too narrow to cover a woman’s chest and contains no sides or bottom.”²⁵ But in almost all other cases, clothing falls outside of the bounds of copyright protection.

Although clothing designs themselves are not copyrightable, designs on the surface of clothing, which are capable of being independent works of art (such as paintings or drawings), have been extended copyright protection.²⁶ Fabric designs, patterns for knit sweaters, designs printed on dresses and lace designs on wedding gowns have been held to constitute copyrightable subject matter.²⁷ When granted, copyrights for these works are often “thin,” offering protection only from designs that are confusingly similar to the original.²⁸

On the whole, then, copyright law affords little protection for clothing designs. Aside from protection for surface designs and a few exceptions that have been recognized by the case law, the design of clothing itself generally is

considered ineligible for copyright protection because it is extremely difficult to separate the artistic from the functional elements.²⁹ As a result, some fashion designers have turned to other intellectual property regimes, such as design patents, to try to secure protection for their designs.

DESIGN PATENTS

Patent law provides protection for new and useful processes, machines, products and compositions of matter through utility patents.³⁰ Design patents are an extension of patent law that protects the ornamental features of an invention. In the most current version of the patent statute, design patents are governed by 35 U.S.C. § 171, which states: “[W]hoever invents any new, original and ornamental design for an article of manufacture may obtain a patent therefor[sic], subject to the conditions and requirements of this title.”³¹ The “conditions and requirements” referred to in § 171 are those of patentability. All patentable inventions and designs must be (1) novel³² and (2) nonobvious,³³ or not readily apparent to someone skilled in the art. Inventions subject to a utility patent have an additional requirement of “utility,” meaning that the invention must serve some useful purpose.³⁴ In contrast, design patents are intended to protect the “ornamental” portion of an item, which must be separable from its function.³⁵ While the scope of a utility patent is defined by the patent’s claims, comprised of written text and figures, a design patent is defined only by its drawings;³⁶ as a result, the scope of design patent protection is limited more than that of utility patents. When granted, design patents provide 14 years of protection for the invention, compared to 20 years of protection for utility patents.³⁷

Although patent law typically is associated with the realms of science and technology, members of the fashion industry have tried to use design patents to gain protection for their apparel designs. It has been extremely difficult, however, for clothing designers to obtain design patents because apparel designs — though ornamentally different from one era to another — rarely merit patent protection.

First, there are few elements of clothing design that are novel and nonobvious enough to be distinguishable from previous types of clothing. The standard, as articulated by the Second Circuit, is that “conception of the design must



Design patents are an extension of patent law that protects the ornamental features of an invention.

demand some exceptional talent beyond the skill of the ordinary designer.”³⁸ For instance, bell bottoms made a resurgence in the late 1990s, incarnated as “boot cut” pants. Though more modest in girth than bell bottoms, boot cut pants clearly were not novel and were obvious in terms of the prior art. As a result, no design patents could have been issued for boot cut pants.

Second, design patent protection issues only when the design is not dictated by the function of the product and is primarily ornamental.³⁹ As noted in the copyright section of this paper, it is difficult to separate design from function in the clothing context. In the example discussed above, even ornamental features such as the boot cut shape serve the utilitarian purpose of protecting the wearer’s legs.

While clothing manufacturers generally have not been able to take advantage of design patents due to the demanding novelty and nonobviousness requirements, athletic shoe manufacturers have been able to obtain design patents and have been responsible for much of the design patent litigation in the fashion context. Design patents on athletic shoes have been upheld even when some of the features in the design also served a useful purpose.⁴⁰ Such protection can be rather limited, however, applying only to the design as pictured in the patent application.⁴¹ And although design patents have been granted to shoes on numerous occasions, courts have not upheld these patents consistently.⁴²

Even if fashion designers were to develop a design that met the standards of novelty and nonobviousness, the process of obtaining a patent (which tends to take around two years) would in most cases be too long and expensive to make patent protection a practical alternative. By the time the designer secured the patent, it would be useless because the commercial lifespan of the design would have lapsed.

TRADEMARK

Trademarks are symbols used to identify the origin of a product in a commercial context. By identifying the source of the product, trademarks serve an important consumer protection function. In contrast to copyrights and design patents, which are used to protect the artistic and ornamental aspects of a product, trademarks protect only the link between the product and its source, not the product itself. If the makers of knockoff goods affix their own trademarks to their products, then trademarks actually can serve to distinguish knockoffs goods from originals and minimize consumer confusion.

To be a registrable trademark, a name or symbol must be able to identify and distinguish a product from other goods in commerce.⁴³ Marks that are arbitrary or fanciful qualify for trademark registration almost immediately, while marks that are descriptive, including surnames, must acquire “secondary meaning” before they may be registered.⁴⁴ Secondary meaning is a specific type of distinctiveness that is acquired through use of the trademark in the marketplace and requires the formation of a link in the mind of the consumer between the trademark symbol and the company for which it is serving as a signifier. So, while fanciful marks for clothing, such as “Banana Republic,” are easily registrable, descriptive marks such as “Tommy Hilfiger” require a considerable amount of investment before they may become registered trademarks.

Protection against trademark infringement has been a key objective for many fashion houses. As knockoff purses bearing “Kate Spade” and “Gucci” labels are sold around the world at bargain prices, it is easy to understand fashion designers’ concerns about trademark infringement. Consumers may believe that the knockoff goods, which are inevitably of lower quality, actually were produced by the company. Some designers have seen blatant attempts to adopt confusingly similar trademarks, as in Gianni Versace’s case against the holder of the “A.V. by Versace” and “Alfredo Versace” marks.⁴⁵ In a more striking case of infringement, Calvin Klein sued a Hong Kong manufacturer for sale and distribution of goods that the company had rejected for quality reasons but were sold overseas with the trademark still attached.⁴⁶ But infringement suits have been filed not only against unknown knockoff companies; Coach sued Ann Taylor for, among other things, an imitation of Coach’s trademarked hanging tag.⁴⁷ The *Coach* court held that Ann Taylor’s hanging tag was confusingly similar to, and infringed, the one used by Coach.⁴⁸

On occasion, certain elements of clothing design also serve as distinctive indicators of the clothing brand, and are eligible for trademark protection. For example, Levi Strauss has a registered trademark in the stitching pattern on the back pocket of its jeans, and successfully has prevented other jean manufacturers from using confusingly similar patterns.⁴⁹ But Levi Strauss’ trademark protection only

extends to the stitching pattern, and not to the design of its jeans in general. Thus, while trademark law may be used to prevent counterfeiting or misleading production of goods, it is not a useful tool to protect clothing designs per se.

TRADE DRESS

Trade dress protection is a relatively recent extension of trademark law. “Trade dress” refers to the unique design or packaging of a product, such as the distinctive curve of a Coca-Cola bottle. Trade dress originally referred to the design of a product’s package, but the scope of trade dress has expanded dramatically so that it now “involves the total image of a product and may include features such as size, shape, color or color combinations, texture, graphics, or even particular sales techniques.”⁵⁰ Although certain types of trade dress may be registered with the Trademark Office, most remain unregistered and must be protected by § 1125(a) of the Lanham Act.⁵¹ This statutory section forbids the use of any similar trade dress that is likely to cause confusion, mistake or deception.⁵²

In 2000, the Supreme Court declined to extend trade dress protection to clothing designs in *Wal-Mart Stores, Inc. v. Samara Brothers, Inc.*⁵³ In this case, a children’s clothing manufacturer sued the retail chain over the sale of knockoff one-piece seersucker outfits for children. The Court held that the outfits were not protected by trade dress law, and confirmed that product designs are only protectable if they acquire secondary meaning as a trademark, such that “in the minds of the public, the primary significance of a [product design] is to identify the source of the product rather than the product itself.”⁵⁴ Fashion designs rarely will have secondary meaning because they are not intended to identify the source of the product, but instead aim to make the product more useful or appealing.⁵⁵ In addition, most fashion designs would be too short-lived to achieve secondary meaning. The Court maintained this high threshold for trade dress protection in order to benefit both competition and consumers, stating that “[c]onsumers should not be deprived of the benefits of competition with regard to the utilitarian and esthetic purposes that product design ordinarily serves.”⁵⁶

A federal court recently applied the *Wal-Mart* holding in a case involving purses.⁵⁷ Design house Louis Vuitton

“Trade dress” refers to the unique design or packaging of a product, such as the distinctive curve of a Coca-Cola bottle.

alleged that Dooney & Bourke’s “It Bag” with multicolored “DB” monograms on white or black backgrounds infringed Vuitton’s trade dress in its similar looking bags. The court held that, while Vuitton had trademark rights in the Vuitton marks themselves,⁵⁸ it did not have trade dress rights in the overall look of its bags. Among other things, the court was concerned that excessive trade dress protection would hinder competition:

Louis Vuitton created a new look and now seeks to preclude others from following its lead. If Louis Vuitton succeeds, then it will have used the law to achieve an unwarranted anticompetitive result. It is well established that the objective of trademark law is not to harm competition.⁵⁹

Indeed, trademark laws seek to safeguard competition, and as the Supreme Court has observed, “copying is not always discouraged or disfavored by the laws which preserve our competitive economy.”⁶⁰

CONCLUSION

This paper began with a quote from intellectual property scholar Jessica Litman, in which she transposes the traditional argument in favor of expansive intellectual property protection to the fashion industry. According to the traditional argument, without intellectual property protection, artists will lack incentives to create and creative industries will wither. It is a powerful argument, and one that has been extremely successful in justifying new rights — the music and film industries have used it to secure (among other developments) a 20-year extension to the copyright term and a new right to control access to digital works. When applied to the fashion industry, however — as Litman’s quote brilliantly illustrates — the theory doesn’t hold. Despite the lack of intellectual property protection (or perhaps because of it), designers continue to create and the industry continues to grow.

Fashion’s counterexample challenges the idea often reflexively accepted by policymakers and courts that “more rights” automatically ensure “more creativity” and less rights will choke it. In the fashion industry, the absence

of rights actually may feed the creative process. Fashion designers are free to borrow, imitate, revive, recombine, transform and share design elements without paying royalties or worrying about infringing intellectual property rights. Of course, fashion designers are not the only creators who draw on previous works in order to create. “Culture ... grows by accretion, each new creator building on the works of those who came before.”⁶¹ If the 12-bar Blues, boy-meets-girl story, or the works of Shakespeare and Mozart were copyrighted, much of the music, films and novels we enjoy today would be illegal. In any creative sector, granting excessive rights could stifle creativity, because every right asserted takes away “raw materials” from future creators.

Fashion’s counterexample also challenges the dominant business model in other creative industries that relies on zealously preventing unauthorized or unpaid uses of content. With fashion, the constant frenzy of creation and imitation may actually drive rather than destroy the market for original goods. Perhaps the ubiquity of a design makes owning the original more desirable and prestigious. Perhaps designers recoup costs by marketing to high-end consumers who want the brand name and quality of the original, while knockoff goods serve those who would not buy couture anyway.

Is fashion the exception or should it be the rule? Does fashion flourish in a less protective climate because of unique mechanics of creativity and marketing, or are we overprotecting in other creative sectors? Either way, the questions are crucial. As this paper has described, intellectual property has been expanding rapidly in recent years, driven by the argument that more protection will spur greater creativity and save creative industries from extinction. But what if this isn’t true? What if these expansions might actually harm the very creativity and industries they seek to protect?

We are currently in the midst of critical debates about optimal levels of intellectual property protection. The fashion experience can inform these debates with important insights into how the creative process works and how different business models function, and merits further, careful examination. ♦

AUTHOR BIOGRAPHIES

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ENDNOTES

¹ Jessica Litman, *Digital Copyright: Protecting Intellectual Property on the Internet* (Amherst, New York: Prometheus Books, 2000), 105-06.

² “Splurge vs. Steal,” *Marie Claire*, July 2005, 154.

³ *Id.*

⁴ A number of law review articles have made this observation, and argued that fashion designs should enjoy greater protection under various intellectual property schemes. See, e.g., Anne Theodore Briggs, *Hung Out to Dry: Clothing Design Protection Pitfalls in United States Law*, 24 HASTINGS COMM. & ENT. L. J. 169 (2002); Safia A. Nurbhai, *Style Piracy Revisited*, 10 J.L. & POL’Y 489 (2002); Jennifer Mencken, *A Design for the Copyright of Fashion*, 1997 B.C. INTELL. PROP. & TECH. F. 121201 (1997); Peter K. Schalestock, *Forms of Redress for Design Piracy: How Victims Can Use Existing Copyright Law*, 21 SEATTLE U. L. REV. 113 (1997); Rocky Schmidt, *Designer Law: Fashioning a Remedy for Design Piracy*, 30 UCLA L. REV. 861 (1983).

⁵ See, e.g., H.R. REP. NO. 1476, 94th Cong., 2d Sess. 50 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5668; Fashion Originators’ Guild of America, Inc. v. Federal Trade Commission, 312 U.S. 457 (1941); Cheney Bros. v. Doris Silk Corp. 35 F.2d 279 (2d Cir. 1929); Policy Decision, Registrability of Costume Designs, 56 Fed. Reg. 56530-02 (Nov. 5, 1991).

⁶ Addressing proposed design protection legislation in 1914, one Congressman remarked: “The trouble with this bill is that it is for the benefit of two parties; that is, the enormously rich who want to display their splendid apparel that they can wear in this country that the ordinary riff-raff ought not to be allowed to wear, and those rich concerns who have these extra and selected designers to design these special patterns for those elite.” Hearings on H.R. 11321, 63d Cong. (1914).

⁷ Testimony of the Department of Justice, Hearings on H.R. 2223, 94th Cong. (1975), H.R. REP. NO. 1476 at 50.

⁸ Kieselstein-Cord v. Accessories by Pearl, 632 F.2d 989, 999 (Weinstein, J., dissenting) (2d Cir. 1980).

⁹ 17 U.S.C. § 102(a) (2001).

¹⁰ 17 U.S.C. § 101 (2001); H.R. REP. NO.

94-1476 at 55. Under the current Copyright Act, a useful article is “an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information.”

¹¹ 17 U.S.C. § 101 (2001).

¹² 347 U.S. 201 (1954).

¹³ *Id.* at 218.

¹⁴ H.R. REP. NO. 94-1476 at 55. Congress explained the reasoning behind this “separability” rule as follows:

[T]he Committee is seeking to draw as clear a line as possible between copyrightable works of applied art and uncopyrighted works of industrial design. A two-dimensional painting, drawing, or graphic work is still capable of being identified as such when it is printed on or applied to utilitarian articles such as textile fabrics, wallpaper, containers, and the like. The same is true when a statue or carving is used to embellish an industrial product or, as in the *Mazer* case, is incorporated into a product without losing its ability to exist independently as a work of art. On the other hand, although the shape of an industrial product may be aesthetically satisfying and valuable, the Committee’s intention is not to offer it copyright protection under the bill. Unless the shape of an automobile, airplane, ladies’ dress, food processor, television set, or any other industrial product contains some element that, physically or conceptually, can be identified as separable from the utilitarian aspects of that article, the design would not be copyrighted under the bill.

¹⁵ Whimsicality v. Rubie’s Costume Co., 891 F.2d 452, 455 (2d Cir. 1989). The *Whimsicality* court further denied the plaintiff’s claim that the costumes at issue in the case were

not useful articles but could instead be classified as soft sculptures, stating that “the word sculpture implies a relatively firm form representing a particular concept. The costumes in question have no such form [W]e conclude therefore that these costumes do not constitute sculpture.” *Id.* at 456.

¹⁶ Kieselstein-Cord v. Accessories by Pearl, 632 F.2d 989 (2d Cir. 1980).

¹⁷ *Id.* at 991.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 993.

²¹ *Id.*

²² Carol Barnhart v. Economy Cover Corp., 773 F.2d 411, 418 (2d Cir. 1985).

²³ Poe v. Missing Persons, 745 F.2d 1238, 1242 (9th Cir. 1984).

²⁴ Schalestock, *supra* note 4, at 123.

²⁵ National Theme Prods., Inc. v. Jerry B. Beck, Inc., 696 F. Supp. 1348, 1350 (S.D. Cal. 1988).

²⁶ Knitwaves, Inc. v. Lollytogs Ltd., 71 F.3d 996 (2d Cir. 1995).

²⁷ Knitwaves, 71 F.3d at 1002; Peter Pan Fabrics Inc. v. Brenda Fabrics Inc., 169 F. Supp. 142 (S.D.N.Y. 1959); Banff Ltd. v. Express, Inc., 921 F. Supp. 1065 (S.D.N.Y. 1995); Eve of Milady v. Impression Bridal, Inc., 957 F. Supp. 484 (S.D.N.Y. 1997).

²⁸ See H.R. REP. NO. 94-1476 at 55.

²⁹ See Melville Nimmer, 1-2 NIMMER ON COPYRIGHT §2.08.

³⁰ 35 U.S.C. § 101 (2001).

³¹ 35 U.S.C. § 171 (2001).

³² 35 U.S.C. § 102 (2001).

³³ 35 U.S.C. § 103 (2001).

³⁴ 35 U.S.C. § 101 (2001).

³⁵ 35 U.S.C. § 171 (2001).

³⁶ 37 C.F.R. § 1.153(a).

³⁷ 35 U.S.C. § 173 (2001).

³⁸ Neufeld-Furst & Co. v. Jay-Day Frocks, 112 F.2d 715 (2d Cir. 1940).

³⁹ L.A. Gear v. Thom McAn, 988 F.2d 1117, 1123 (Fed. Cir. 1993).

⁴⁰ *Id.* Upholding a design patent on a sneaker, the court stated: “[T]he utility of each of the various elements that comprise

the design is not the relevant inquiry with respect to a design patent. In determining whether a design is primarily functional or primarily ornamental the claimed design is viewed in its entirety, for the ultimate question is not the functional or decorative aspect of each separate feature, but the overall appearance of the article, in determining whether the claimed design is dictated by the utilitarian purpose of the article.”

⁴¹ Payless Shoesource v. Reebok International, 998 F.2d 985, 990 (Fed. Cir. 1993).

⁴² Briggs, *supra* note 4, at 178.

⁴³ 15 U.S.C. § 1052 (2001).

⁴⁴ *Id.*

⁴⁵ A.V. By Versace v. Gianni Versace, 126 F. Supp. 2d 328 (S.D.N.Y. 2001).

⁴⁶ Calvin Klein Industries, Inc. v. BFK Hong Kong, Ltd., 714 F. Supp. 78 (S.D.N.Y. 1989).

⁴⁷ Coach Leatherware Company, Inc. v. Ann Taylor, Inc., 933 F.2d 162 (2d Cir. 1991).

⁴⁸ *Id.* at 170.

⁴⁹ Lois Sportswear v. Levi Strauss & Co., 799 F.2d 867 (2d Cir. 1986).

⁵⁰ Two Pesos v. Taco Cabana, 505 U.S. 763, 765 n.1 (1992).

⁵¹ 15 U.S.C. § 1125(a) (2001).

⁵² *Id.*

⁵³ 529 U.S. 205 (2000).

⁵⁴ *Id.* at 211 (internal citation omitted).

⁵⁵ *Id.* at 213.

⁵⁶ *Id.*

⁵⁷ Louis Vuitton Malletier v. Dooney & Bourke, Inc., 340 F. Supp. 2d 415 (S.D.N.Y. 2004).

⁵⁸ There was no infringement of Vuitton’s marks because Dooney & Bourke used its own “DB” mark, making it obvious to consumers that the Dooney & Bourke bags were not Vuitton bags. *Id.* at 440.

⁵⁹ *Id.* at 420 (emphasis in original).

⁶⁰ Traffix Devices v. Marketing Displays, Inc., 532 U.S. 23, 29 (2001).

⁶¹ White v. Samsung Electronics, 989 F.2d 1512, 1513 (9th Cir. 1993) (Kozinski, J. dissenting).





▶ Pastel hues of famed artist Cecil Beaton shimmer anew in this contemporary evening gown.

BY DAVID BOLLIER
AND LAURIE RACINE

READY TO SHARE:

CREATIVITY IN FASHION & DIGITAL CULTURE

Anyone who ventures onto the Internet quickly discovers that the creative spirit is riotously alive. On any given day, 8 million bloggers forage the deep forests of the World Wide Web for twigs and leaves of information, which they weave into personal nests. Remix musicians sample snippets of music and ambient sounds, synthesizing them into startling new musical creations. Tens of thousands of software programmers collaborate in building soaring cathedrals of code, which run operating systems, Web sites, document archives and much more. Filmmakers and photographers pore through archives of public domain and privately owned material searching for the perfect images from which to create new visual works.

The open, participatory culture found on the Internet and other digital media is perhaps the defining crucible of creativity in our time. Guided by a sensibility that appropriates from irregular materials that exist in other contexts and forms, the Internet has redefined the way we express ourselves and relate to culture. Structuralist Claude Levi-Strauss once described this recombinant creative process as *bricolage*¹, a concept that refers to the constant mixing and morphing of incongruous “found” elements into a new synthesis.

But is this environment of open borrowing and transformation a liberating place for the imagination — or simply a state of lawless anarchy in which pirates prey upon the work of the truly creative and hard-working? Can a cultural milieu truly flourish without strong intellectual property rights and market control over creative work? Or, to the contrary, is a deliberately unstructured, uncontrolled environment one of the most powerful ways to nurture innovation?

We believe that the world of fashion — known for its embrace of appropriation, derivation *and* imitation, and for its ferocious attention to the bottom line — can shed light on these questions. It can help us understand the social and

cultural wellsprings of creativity as well as the plasticity of the marketplace. There are, in fact, many ways that the raw social and human energy known as *creativity* can be refined and packaged as it travels from the human mind and social groups to the marketplace. This reality is on display not only in the world of fashion, but also in the growing universe of digital culture. The “ecologies of creativity” in both realms are strikingly similar.

In sharp contrast, other creative sectors like music and film remain committed to business models that value ownership and control of content above all else. To listen to music and film executives, much of what passes for “creativity” in the digital world is nothing less than theft. These business leaders argue that strict copyright controls are necessary if anyone is going to have sufficient incentive to create new works. Yet to many artists who live and create via electronic networks, creativity has never been more robust and innovative precisely because, thanks to new technologies, copyright protections are relatively lax.

The core issue in this debate between intellectual property protectionists and cultural renegades is the control of creativity. Does creativity need to be controlled strictly

through copyright law in order to thrive? Or can creativity actually flourish in a milieu of open appropriation and derivation, without destroying the potential for a healthy, competitive market? Although the fashion business usually does not engage in this sort of self-examination, this paper argues that the fashion business reveals a great deal about the “cultural hydraulics” of creativity and the novel ways in which intellectual property law can foster, and not restrict, creative freedom.

Fashion is a quicksilver mode of creativity that many people dismiss as trivial and ephemeral. It is, after all, the demimonde of celebrities, high society, supermodels and decadent flamboyance. Yet fashion is also one of the most high-profile creative sectors of our time, with earnings that vastly exceed those of the music or film industries.

It is difficult to find reliable numbers to describe the scale and scope of the fashion industry. It is a sprawling global enterprise consisting of many specialty clusters (apparel, accessories, fabric, etc.) with many interconnected and irregular players (designers, manufacturers, merchandisers, marketers, etc.). Yet one can get an idea of the industry’s size when one considers that the international trade of textiles and apparel accounts for some \$495 billion.² In the United States alone, apparel sales in 2003 supported an estimated 80,000 garment factories and generated \$192 billion, according to the Chicago research firm Euromonitor International.³ The American film and video-DVD industry, by contrast, had revenues of \$60 billion in 2003, according to the U.S. Census Bureau.⁴ The music industry reported revenues of \$12.6 billion in that year, according to the Recording Industry Association of America.⁵

While the economic footprint and splashy styles of fashion may attract the most attention, fashion’s distinctive “ecology of creativity” may be its most important attribute. Indeed, the cavalcade of beautiful clothes and accessories, and the unpredictable new styles and attitudes that burst forth every so often, are products of a very special social and economic system. With great speed and flexibility, fashion constantly expresses shifting cultural moods, social demographics and personal identities with new apparel designs and accessories. This remarkable and turbulent drama is, in turn, seamlessly integrated into a complicated

market apparatus of global production, marketing and distribution.

The result, rare among creative industries, is a highly robust, churning tide of innovation. Fashion is a vital, vigorous creature living in an open, always evolving environment. It is no accident that fashion permits and even celebrates the appropriation and modification of other people’s creative designs; these practices are an indispensable part of the process. Designers do not need to ask permission or pay fees in order to make their own interpretations of hip-hugging denims, leopard-skin bikinis or black evening dresses. They just do it. The ferment of new ideas and innovation is literally out of control, and beyond the ability of any single player to manipulate or dominate. Since strict market control is generally impossible, nearly everyone strives to stay ahead of the competition through the sheer power of one’s design and marketing prowess.

Metaphorically, fashion is all about black and white and gray. Designers use black and white shades as basics — sometimes incorporating them as the grounding for a season’s lines; other times using them as accents to highlight an expression or mood. The two absolutes serve as a kind of default to which fashion often reverts before venturing forth to explore a broader, more subtle spectrum of color.

Figuratively speaking, black-and-white also symbolizes the fixed boundaries of intellectual property law, which aims to set clear rules for what sorts of innovation are permissible and which are not. And black-and-white represents the boundaries within which the business of fashion must operate, with profitability being of paramount importance.

But black-and-white must be seen as simply the *framework* for the real work of fashion — the constantly changing permutations of gray. Gray can be considered the shade that drives creative innovation because creativity is a process, not a final destination. It is made up of pathways and linkages that are neither fixed nor immutable. There are no absolutes, like the shades of black and white. Fashion’s real mission and its most memorable achievements are seen in its explorations and the *filling in* of everything that can exist between the black and the white. Fashion is all about novelty and experimentation, and about striving to be as daring and original as possible.

Paradoxically, the unfettered freedom and pace of fashion can exist only because the black-and-white frame does not interfere with the sector’s open “creative space.” In fashion, most design innovation is immediately available to everyone. Indeed, there is a long history in fashion of “knocking off” haute couture garments and selling them as quickly as possible at lower price points. The past is constantly being plundered for “new” ideas. Stylistic elements are routinely appropriated from the most unlikely places — Polynesian islands, urban street corners, stock-car races, bowling alleys — and transformed into new trends. In fashion, nearly every design element is available to anyone for the taking. Any fashion design, one might say, is “ready to share.”

The term is, of course, a play on the fashion industry’s bread-and-butter market, “ready-to-wear.” But we use it here to reference fashion’s rough-and-tumble approach to the ownership of creativity. This complex dynamic warrants investigation. Why is it that the “borrowing” that is a standard practice in fashion is denounced as “theft” when it occurs in music or film? Why should sampling and even exact garment replications be considered acts of genius in fashion, or at least respectful homage, while the titans of most other creative fields regard such appropriations as scurrilous acts of piracy?

Answering these conundrums requires that we probe the deeper sources of creativity itself — and the ways that different market structures can be built atop the social communities responsible for innovation. It also requires that we recognize those attributes of garment design and marketing that are unique to fashion, and that may or may not apply to other creative sectors.

A NEW GRAND NARRATIVE FOR CREATIVITY

We believe that the styles of creative bricolage exemplified by fashion and new digital environments embody a new grand narrative for creativity, born of ancient tradition. This new story of creative innovation cannot be understood by the traditional premises of copyright law, which are fixated on individual creativity. Rather, this new story sees individual genius in the context of evolving social relationships and community practice. Creativity is not just a matter of indi-

vidual creativity, but a conversation between individuals and larger communities of people and creative traditions.

The traditional story laid out by copyright law sees creativity as more or less an individual product and a static product; works must be instantiated in a physical medium, for example, in order to earn protection. But the new grand narrative that we see in fashion is, like online creativity, inherently social and dynamic. Creativity not only is given wide leeway to change and evolve in whatever directions it wishes, but the marketplace also is structured to respond to consumers in more organic, flexible and rapid ways. The predictable and unpredictable churn of styles, and the fairly open and decentralized marketplace, enable talented and resourceful newcomers to enter the market and succeed. No style is ever fixed and consummated, once and forever; no market franchise lives forever. Creative design is always in flux.

In this sense, fashion has many striking resemblances to digital environments that work through the Internet. Creative ideas are available to all through an open commons. Creators enjoy access to a bottomless reservoir of possibilities. Consumers enjoy unparalleled choices. Despite limited copyright protection, companies continue to rise and fall and make money. The ecology gives rise to a centrifugal spiral of innovation and new businesses. It is an environment in which the open and the proprietary are more or less aligned, not clashing, and creative freedom can flourish without onerous legal restrictions. It is hard to imagine a more compelling, responsive, sustainable milieu for creativity.

In the bricolage world of fashion and digital culture, creativity is a fragile and ephemeral essence. The legendary designer Coco Chanel once observed: “Fashion is not something that exists in dresses only; fashion is something in the air. It’s the wind that blows in the new fashion; you feel it coming, you smell it ... in the sky, in the street; fashion has to do with ideas, the way we live, what is happening.” It is tempting to focus on the tangible “containers,” but fashion is simply the “clothing” for a deeper creative spirit.

What is so captivating about the ecology of creativity in fashion is its ability to host the protean spirit of the imagination, and to build profitable businesses around it, without becoming sterile and rigid. This same sensibility prevails

in the digital world. Although we may associate creative artifacts with their tangible forms — CDs, DVDs and countless electronic appliances — their real essence is immaterial and versatile. It is always in flux — moving, replicating and morphing — through the virtual channels of the Internet. While it is tempting to see the products of digital creativity as instances of “intellectual property” — a fictional object defined by law — in truth the creativity of digital media is far too elusive, abstract and mercurial to be confined easily. Like a virus that locates a hospitable “host” to replicate itself, human creativity uses digital technologies as cheap and easy hosting facilities for its relentless bricolage.

FASHION AND THE OWNERSHIP OF CREATIVITY

Before exploring the similarities between creativity in fashion and the culture of bricolage, we must explore how creativity originates, circulates and is transformed in the world of fashion design. It is worth probing this issue because it suggests something about how creativity and markets can interrelate in a healthy, vigorous way. Fashion shows how appropriation and sharing is necessary in any creative community and how it can also contribute to a robust, competitive marketplace.

Fashion is one of the few creative industries in which it is usually impossible to claim copyright protection for one’s work. Two-dimensional fabric designs and ornamental features such as buttons are entitled to copyright protection, and newly developed man-made fabrics can be patented, but otherwise, most aspects of garment design cannot be owned. Only one’s business name and logo can be protected, as trademarks. Despite perennial calls for extending copyright protection to more aspects of fashion, the lack of such protection has not hurt the overall fortunes of fashion in the least. Indeed, the industry as a whole has flourished.

The ecology of creativity in fashion features an open design commons, limited copyright protection, a focus on marketing and branding, and competitive markets that reward innovation and speed. Intellectual property rights are not unimportant in this regime, to be sure, but neither do they obstruct new sorts of creativity and competition. Businesses still enjoy proprietary advantages — their brand name and reputation — but no one is allowed to privatize

and lock up design itself. Fashion recognizes that pleasing a diverse, constantly changing consumer base in a timely way is the key to a profitable bottom line, and that staying one step ahead of fickle style trends that last months, not years, is imperative to success.

The evolution of styles in fashion may seem quixotic and arbitrary, and indeed it is, at a certain level, mysterious. One only can venture theories. Yet it is clear enough that apparel design has its own rudimentary “physics” — a rough set of principles that seem to explain how new styles emerge, develop and are embraced by consumers.

One must, at the outset, distinguish the traditional hierarchy of fashion from today’s more democratic ecology of fashion. For most of the 20th century, haute couture in Paris, Milan and New York was the fountainhead of new styles. A handful of prestigious fashion houses were the recognized arbiters of taste, their styles trickling down to the masses in irregular cascades. Department stores followed the lead set by Paris, for example, making their own adaptations of the season’s popular styles. Traditional fashion involved designers catering to well-heeled clients, whose tastes in clothing and style were forged, if not dictated, by recognized fashion magazines.

While the vestiges of this system remain, a far more open, competitive and dynamic fashion industry has arisen over the past 40 years. Teri Agins describes this evolution in her landmark 1999 book, *The End of Fashion: How Marketing Changed the Clothing Business Forever*,⁶ and in her reporting as fashion commentator for *The Wall Street Journal*. She suggests that as more women entered the workforce in the 1960s and 1970s, the cultural appeal of high fashion waned. Working women needed a different type of wardrobe, and department stores and boutiques began to offer fashionable clothes at cheaper prices.

In the open and democratic fashion environment that developed in the following decades, the aura of the catwalk was replaced by the spectacle of the red carpet. Styles were no longer driven by elite fashion shows, but by movies stars and celebrities wearing couture clothes chosen by professional stylists. Rather than a twice-a-year fete in select cities around the world, fashion became a year-round, ubiquitous passion.

Fashion is one of the few creative industries in which it is usually impossible to claim copyright protection for one’s work.

The industry’s evolution also was fueled by the marketing genius of Ralph Lauren, who in the late 1960s brilliantly introduced the idea of integrating fashion with lifestyle. He launched a campaign associating his clothing lines with a largely imagined lifestyle of affluent, landed-gentry WASPs living in a world of country estates, travel and equestrian sports. He splashed his lifestyle fantasy across the pages of magazines and on billboards and buses and, in the decades that followed, the branding of clothing and marketing of lifestyles became merged. As a result, designers began offering apparel and accessories that reflected and resonated influences from music, film and the street. Retailers, in turn, reinterpreted those influences and offered them back out to the larger culture from which they originally emanated.

Throughout this shift in emphasis from high fashion to today’s more ecumenical fashion marketplace, however, there has been one significant constant: the appropriation and derivation of other people’s creativity. If fashion is going to be culturally relevant, it must be constantly on the move, and no one can be allowed to own it.

THE DURABILITY OF HOMAGE

If Ralph Lauren was a pioneer in linking an elite lifestyle to a line of clothes, and marketing it to the masses, he was, at bottom, aping someone else’s work. Lauren’s creations drew upon a body of accumulated fashion design by the venerable fashion houses, which continue to hold great cachet. Such fashion houses as Chanel, Yves Saint Laurent, Givenchy and Balenciaga long have been pacesetters for “original” design.

These elite brands are not frozen in amber; they repeatedly have been built and rebuilt around an ethic of homage, the respectful referencing and imitation of other people’s creativity. The great designers of today routinely incorporate and adopt aspects of their mentors’ work, refining basic elements and adding new design aesthetics. Ungaro was the protégé of Balenciaga; Lagerfeld drew upon Chanel. Tom Ford incorporated the traditions of Gucci, and Alexander McQueen recognized the style of his sponsor, Givenchy.

Fashion, in this sense, always has been a form of creativity based on lineage. The individual designer may have his own distinctive talents, but he also participates in a

recognized tradition. Indeed, young designers freely incorporate aspects of house tradition — an affinity for draped jersey here, an attraction to certain color palettes there — into their own personal styles. Inevitably, when protégés later go off to start their own named line, they take certain stylistic leitmotifs from their former patrons while developing their individual signature look.

The adage “what goes around comes around” is perfectly suited to fashion. In 2003, Oscar de la Renta candidly admitted that his designs derived from famous peers. Cathy Horyn of *The New York Times* reported: “In his studio last week, [de la Renta] pointed with amusement to a picture of a Balenciaga shift with a draped back and then to a dress he took from his wife, Annette’s, closet, a virtually identical model made for her in the 90s by Saint Laurent. On Monday, Mr. de la Renta sent out his version, in vivid melon.”⁷

As creativity migrates the continuum from originality to outright imitation, the very idea of “originality” begins to appear more problematic. Guy Trebay, a fashion reporter for *The New York Times*, wryly noted: “Adolfo builds a wildly successful business on an interpretation of a boxy suit by Coco Chanel; lucky for him Ms. Chanel, being dead, is unable to litigate. Tom Ford becomes famous copying Halston, Alexander McQueen for aping Vivienne Westwood. Half of fashion, in fact, seems to owe its professional existence to a single truism: one is as original as the obscurity of one’s source.”⁸

In an environment of constant emulation, it can be difficult to separate “originality” from “imitation.” The two blur together so seamlessly that it often doesn’t make sense to try to sort them out. Such conclusions are jarring to anyone steeped in the orthodoxy of copyright law, which presumes that it is in fact possible — and perhaps urgently necessary — to ascertain the authorship and “originality” of a work.

While there is little question that individual artists bring their own distinctive talents to bear on any creation, it is worth recalling Salvador Dali’s puckish admonition: “Those who do not imitate do not create anything new.” Or as fashion journalist Cathy Horyn playfully put it, “Fashion is in some ways like a worm going from one apple into the next”⁹

One must wonder how important “originality” truly is if a “derivative” rendition can attract its own separate following. Consider the daisy chain of creative transformation that bobs and weaves from British sports and military tradition through a series of designers to culminate in Tommy Hilfiger. Cayce Pollard, the protagonist of *Pattern Recognition*, a thriller by novelist William Gibson, frankly is repulsed by the dilution of a style through imitation. She laments:

My God, don't they know? This stuff is simulacra of simulacra. A diluted tincture of Ralph Lauren, who had himself diluted the glory days of Brooks Brothers, who themselves had stepped on the product of Jermyn Street and Savile Row, flavoring their ready-to-wear with liberal lashings of polo knit and regimental stripes. But Tommy is surely the null point, the black hole. There must be some Tommy Hilfiger event horizon, beyond which it is impossible to be more derivative, more removed from the source, more devoid of soul. Or so she hopes, and doesn't know, but suspects in her heart that this in fact is what accounts for his long ubiquity.¹⁰

However derivative his clothing, Hilfiger remains a popular fashion brand. The most important point may be that one person's etiolated style is another generation's fresh feedstock. What seems like a derivative dead-end from one vantage point frequently turns out to be, decades later, the direct inspiration for a fashion revival. Today's styles become the compost for tomorrow's new growth. And so the cycle continues.

HOW FASHION BUILDS UPON THE PAST

Contemporary fashion always is engaged in a spirited dialogue with the past and culture. The homage that prevails within fashion is but a microcosm of a larger, more bracing dialogue in all creative art, between design and earlier styles, particularly artistic traditions and recognized cultural symbols. The intimate affinity between fashion and culture plays itself out as bricolage; meaning and beauty are drawn from whatever elements are at hand, which designers then transform into something “new.”

A dramatic explication of this premise can be seen in the celebrated Goddess Exhibit mounted by the Costume Institute of Metropolitan Museum of Art in New York City in 2003.¹¹ The show presented the goddess as both an iconic artistic image and a tradition of dress design. Drawings, sculptures and paintings depicting ancient “goddess” images showed how recurrent motifs were used in apparel spanning the ages, from ancient Greece and Rome to the 19th century and modern dress. The exhibit showcased the classic “goddess” style in three distinct dress forms of Grecian and Roman eras, and tracked their development through modern-day couture interpretations. Remarkably, little has changed. Reinterpretations by Halston, Donna Karan and John Galliano, sometimes line for line, easily could be recognized as emanating from classic civilization.

The Goddess Exhibit depicted how originality and imitation actually can coexist in seamless harmony. Novelty is built atop an archetype. Separating the two may be theoretically possible — copyright law protects expression, not ideas — but in practice innovation and archetype are inextricably fused. Indeed, that is precisely why some designers gravitate toward archetype; such designs seem to resonate at a certain timeless, fundamental level, while still proving amenable to contemporary adaptation.

The fusion of fashion and art is a natural convergence, of course. Both are dedicated to seeking out that which is new, provocative and beautiful. Fashion and art also have natural commercial synergies, as most designers realize. For the last five years, Madison Avenue, world-renowned home of designer boutiques and art galleries, has mounted a week-long exhibition titled “Madison Avenue: Where Fashion Meets Art.” Sales have supported such institutions as the Whitney Museum of Art, as the promotional campaign is a yearly acknowledgement of the inexorable link between fashion and fine art, aesthetic refinement and upscale prestige.

Artist and designer Elsa Schiaparelli was a pioneer in fusing fashion and art in the 1940s and 1950s. She is credited by reviewer Roberta Smith with being “the first modern fashion designer to collaborate with artists while also thinking like one We owe to her the idea, so prevalent today, of the fashion designer as an art-smart provocateur and promo-

tion-minded celebrity.” Schiaparelli made dresses inspired by the Surrealists, transplanting trompe l'oeil techniques from paintings to dresses. Her motifs often drew upon the playful, conceptual art of such painters as Marcel Duchamp and Paul Poiret. One of Schiaparelli's dresses — a gown worn by Zsa Zsa Gabor in the 1952 film *Moulin Rouge* — is an exact copy of a dress in a Toulouse-Lautrec lithograph.¹²

Fashion designers do not only embrace classic artistic forms or historical artifacts to create new lines. Fashion routinely borrows from itself. Building a new season's collection on designs from years past is an essential component of fashion praxis. Today, evidence of fashion raiding its own closet abounds in the success of vintage clothing dealers. Cameron Silver, the owner of Decades, Inc., a vintage clothing chain in Los Angeles and London, said that 60 percent of his business comes from designers. In New York City, designers constantly trek to Gallagher Paper Collectibles, a small East Village grotto that owns a rich archive of vintage fashion magazines. Proprietor Michael Gallagher told a reporter: “We get them all, Hedi Slimane, Karl Lagerfeld, Marc Jacobs, big time, John Varvatos, Narcisco Rodriguez, the Calvin assistants, the Gucci assistants, Dolce & Gabbana, Anna Sui — you name it. They all come here for inspiration. At least that's what we call it.”¹³

Seth Weisser, co-owner of What Comes Around Goes Around, told a reporter: “Remember that Celine double-wrap belt with the metal on the outside? The original was from us. It's exactly as it was.” Weisser admits that “when the good stuff comes in, there are about five designers who get the call.”

What fashion may borrow from art and from vintage styles, it certainly returns in a coin of equal value. This is an elemental part of culture: Ideas and designs must flow constantly like water. Fashion and art both share an ethic of borrowed inspiration. If such unmeasured circulation of design offends the guardians of intellectual property, creators and aesthetes have few qualms. They consider it the heart of culture. “A culture could not exist if all free riding were prohibited,” writes legal scholar Wendy Gordon. “Culture is interdependence, and requiring each act of dependency to render an accounting would destroy the synergy upon which cultural life rests.”¹⁴

“Everything in fashion begins in the street.”

—Diane von Furstenberg

THE STREET AS A SOURCE OF FASHION

“Everything in fashion begins in the street,” the fashion designer Diane von Furstenberg once said.¹⁵ Although an overstatement, von Furstenberg's claim points to an open secret of fashion design: “The street” is one of the richest, most fertile sources of innovation. It may take an insightful designer to identify and adapt a fugitive style seen on the street, but designers readily acknowledge that the street has a creative vitality that no one can ignore.

The street is forever dedicated to the renegade and unpredictable, and to styles that are jarring, improbable and surprising. “Has there ever been a designer's catwalk that produced better fashion than a city sidewalk?” asks Guy Trebay. “Is there a style, high or low, that has not felt the influence of Fifth Avenue, or Bushwick Avenue in Brooklyn, or the Rue Bonaparte ...?” *New York Times* fashion photographer Bill Cunningham has made a career chronicling the emerging styles that he detects on the streets of New York City. His weekly photo essays, “On the Street,” announce the ubiquity of pink, fur, bare-midriff T-shirts or broaches.

While some trends can be pushed successfully by fashion-forward designers, the street is a fractious animal. It often insists upon making its own defiant statements. Some of the biggest trends of recent decades — cargo pants, lowriders, frayed jeans, do-rags — originated among the musicians, night-clubbers and bohemian vanguard of urban America.

Urban fashion pioneers, hip-hop artists have become one of the great engines of new fashion trends. Hip-hop played a major role in converting track suits, wrestling shoes (and boxing and soccer shoes), designer sneakers, outsize denims, prison-style jumpsuits and underwear worn above the trouser waistband into fashion must-haves.¹⁷ Leading hip-hop artists took notice when established Italian fashion houses like Dolce & Gabbana and Versace appropriated urban streetwear for their new collections. Several decided it was time for them to build on their personal musical brands and launch their own clothing lines: Sean Combs began the Sean John label, Russell Simmons started Phat Farm, Eminem has his Shady Ltd. Line and Jay-Z started Rocawear.

Female rappers like Mary J. Blige, Foxy Brown and Lil' Kim, too, have capitalized on their celebrity image and music to call attention to their clothing collections — a cross-media synergy, as it were. (Lil' Kim once posed nude on the cover of *Interview* magazine with her body painted with Louis Vuitton logos.) “Hip hop artists today are the icons,” said Peter Ferraro, associate publisher of *Source* magazine. “In the past, they were using supermodels.”¹⁸

The popularity of hip-hop — the music, the video images, the lifestyle of its stars — propelled its move into fashion. “The bottom line is that urban sells way more than high fashion,” Emil Wilbekin, editor of hip-hop magazine *Vibe*, told a reporter. “Sean John sells way more than a Donatella Versace.”¹⁹

The great fashion writer Holly Brubach once wrote, “Fashion is one of the means by which we dream collectively,” calling it “a feminine counterpart to architecture.” If fashion is a language by which we express ourselves, then, said Brubach, “it is incumbent on every generation to remake the world in its image.” The street performs this function. It is a theater in which our culture expresses itself and remakes its identity. Fashion is the medium.

“A strong street style is the healthy sign of a society that is enthusiastic about itself,” said artist Ruben Toledo. “Immigration is vital to its survival. The fertilization of style is enhanced by the rare and new, by the cross-pollination of ideas. It is also a sign of a society that values freedom of interpretation — underwear becomes outerwear, overcoats become dresses, extra small on me is extra large on you.”²⁰ The street is a key reason why fashion remains so creatively alive. Fashion could not renew itself without the uncontrolled cultural space that the street represents. As one observer put it, “Street fashion can afford to make mistakes, to change its mind overnight, because it’s cheap or on sale or found on the curbside like an orphan.” The street is a living proof that creativity is too large and dynamic for anyone to own.

No one really has a protected market franchise. Every market participant constantly must be on the prowl for the “new,” and even classic styles must be updated periodically. To be sure, companies can and do seek to gain some proprietary control over new trends. They try to become the first

to market, for example, or to cultivate a marketing identity closely associated with a lasting trend. Many fashion houses also employ “cool hunters” to forage through urban subcultures in search of the next big trend²¹, and subscribe to “trend research” newsletters like the *Tobé Report*. and other tip sheets.²²

The makers of clothing, sneakers and accessories feel compelled to identify if and when a geeky, forgotten product — Converse sneakers, Hush Puppies casual shoes, pink menswear — are going to catch on as new fads. Designers look to the street both as a source of inspiration and as a benchmark against which they must compete. An important factor in creativity in fashion, then, is insecurity. *No one can really know in advance just what styles the street will embrace and ratify as a trend.*

“Cool” is always moving on, just out of reach. But it cannot be ignored if only because it embodies a spirit of cultural authenticity and validation that commercial fashion today *needs*. Fashion therefore constantly must draw upon the street if it is to renew itself. The street has panache and credibility precisely because its sensibility is uncontrolled and wild; the commercial machine has not yet domesticated it through mass marketing. Styles from the street are seen as expressions of “real feelings”; they elude (for now) the calculated marketing gambits of major corporations.

Designers sit astride this tension between the street and the market. They recognize the creative energy and mass appeal of “street styles,” yet they also know that commercialization ineluctably will take the bloom off the rose. They pursue a paradox: to create designs that connote social exclusivity ... and then reinterpret them for their customers. The very act of selling tends to vitiate the exclusivity being sold.

Much of fashion is about negotiating this tension between the popular and the exclusive. A fashion reporter profiling Marc Ecko, a street-inspired designer, concluded: “What the Eckos of the world cannot combat is the manner in which trends often emerge organically and unpredictably from the street. Here, young people are powerfully swayed by and averse to marketing at the same time.”²³

In truth, the street encompasses “all of culture.” Nearly all aspects of culture are routinely used as feedstock for new fashion designs. The most unlikely backwater in the

U.S. or anywhere in the world is regarded as a plausible source of new styles. The fashion houses Imitation of Christ, Preen and Jessica Ogden have built collections around thrift-store clothing.²⁴ Some designers have seized upon tacky souvenir T-shirts to produce their own faux down-home T-shirt designs.²⁵ Clothing inspired by NASCAR stock-car racing — checkered tops, splashy graphics, leather jackets with logos for Budweiser and Quaker State Motor Oil — enjoyed a brief vogue in 2001.²⁶ At one point in 2002, reported *The New York Times*, younger designers were “rediscovering the early renegade work of Vivienne Westwood, whose collection drew inspiration from pirates, peasants and American Indians.”²⁷

All this stylistic imitation and transformation is not necessarily faddish. Sometimes a design’s original function specifically is utilitarian and, through circumstance, genius or trend, evolves into an iconic fashion element, actually creating a new archetype. For example, when Levi Strauss made Levi’s denim trousers from tent canvas, introducing rivets to prevent the pockets from tearing, he had no idea that denim jeans would become the fashion staple of the last 50 years. Likewise, Coco Chanel’s 1926 coinage of the little black dress as a symbol of urban sophistication — a uniform suitable for cocktail parties and concerts, not just funerals — truly was inspired.

The trench coat originated, quite literally in the trenches of WWI. The clothier Thomas Burberry, who already had invented the fabric called gabardine, submitted the original design to the British War office in 1901. The coat was modified and given to the troops to protect them from the muck and the mire of European winters. It later went on to become a standard raincoat design. In the last several years, the trench coat has re-emerged as a trendy staple, with Burberry once again leading the charge.

The ecology of creativity in fashion that we have sketched here points to a deep and abiding principle about creativity: It requires freedom. It can endure only so much private control before it careens into a downward spiral of sterile involution. If it is to be fresh, passionate and transformative — if it is to express a cultural moment and speak to our aspirations — fashion must have the room to breathe and grow.

So far we have focused on the “spectacular shades of gray” — the innovation, the experimentation, the sharing — that color fashion, and not on the “black-and-white” frame that contains its energies. As suggested earlier, in order to leverage the powers of the marketplace, creativity also must exist within a regime of business profitability and intellectual property law. We turn now to the intellectual property rules that enable creativity in fashion to be so seemingly boundless yet still capable of supporting a robust marketplace.

THE ETHICS OF IMITATION IN FASHION, OR THE DIFFERENCE BETWEEN COUNTERFEITS, KNOCKOFFS AND PLAGIARISM

A key reason why the ready-to-share ethic can survive in fashion is that companies are able to claim property rights, albeit through the use of two important legal tools — trademark and trade dress. These intellectual property protections enable businesses to leverage brand names, logos and certain aspects of three-dimensional design that usually are applied to handbags. The locus of piracy is thus shifted. As a result, copying a garment design is entirely legal, and even respectable, but copying a brand name or logo is considered an act of piracy and the resulting products are called counterfeits.

The legal distinction between a *counterfeit* and a *knockoff* is crucial. It is what enables the fashion world to sustain its wide-open creative ethic while maintaining its profitability. A counterfeit dress is one that falsely bears the label of another designer even though no license has been paid. A knockoff is a dress that may be almost identical to a brand-name dress, but it does not purport to be anything but what it is: a nearly identical knockoff produced by someone else.

Counterfeiting is wrong not because it imitates design elements, but because it steals from the repository of value in fashion — the trademarked name and logo. Designers have credibility, stature and profitability because their name comes to represent a look and an artistic standard.

The moment designs appearing on the runways of Paris were mimicked and mutated for the tastes and budgets of a larger audience, the knockoff culture was born. Over the last 60 years, the demand for knockoffs has increased

exponentially as women have come to embrace the idea that one can look like a million bucks without having a million in the bank. The demand for knockoffs only has grown with the rise of cheaper production technologies, faster logistics and shorter fashion cycles.

Initially, department stores primarily were responsible for harnessing and carefully reproducing the couture look. Stores felt no compunction about offering both couture label garments and store-label imitations. A pivotal moment in the history of knockoffs occurred in 1957, when Seventh Avenue garment makers copied Christian Dior skirts for Macy's before Dior's own clients had received the originals. Dior's response was brilliant and prescient. He proceeded to introduce his own label, non-couture, ready-to-wear line. The idea was to profit from both ends of the market — those who could afford couture and those who wanted to look like they could. Today, most major designers have developed multiple market price points.

The fashion world has become so acclimated to knockoffs that insiders trade countless anecdotes about the lineage of an idea or the blatant imitation of a distinctive article of clothing by someone else. The storytelling ripens into lore that serves to reinforce and validate the knockoff ethic. Legendary fashion photographer Manuela Pavesi once told a friend (who later told *New York Times* reporter Guy Trebay) that her Prada coat was a copy of an original Balenciaga coat that Miuccia Prada had found at a vintage-clothes dealer in Paris. "Miuccia loved this coat so much," Pavesi said. "So much that she took it and copied it. But I mean copied it exactly."²⁸

Occasionally, the designer credited with the "original" fights back. In 1982, Giorgio Armani called off his fashion show because the press refused to delay publishing reviews and pictures of his new lines of clothes until the merchandise was in stores. He wanted to thwart imitators from making knockoffs in the interim period. And Ralph Lauren famously sued Yves Saint Laurent in 1994 for making a \$1,000 sleeveless tuxedo gown that he claimed was a rip-off of his \$15,000 couture version.²⁹ (Lauren and Saint Laurent later settled.)

Attention to design detail has become more refined in the knockoff culture of the last decades, and price points

now range from high-end "bridge" collections to chain-store merchandise. There is now a flourishing, above-ground segment of the industry expressly devoted to producing replicas of dresses worn by major entertainment celebrities. ABS, started by Allen B. Schwartz, the most visible and successful of these companies, assiduously copies the designer gowns worn by stars at the Academy Awards ceremony, churns them into production within hours and has them on the department store floors within days. Other knockoff entrepreneurs such as Victor Costa and AnyKnockoff.com, a Los Angeles-based maker of "designer-inspired products," also give credence to this independent industry form. Any-Knockoff.com declares (figuratively, one assumes), "We tear out the designer label and save you money."

In our time, the knockoff ethic has become so consuming and ubiquitous that it is reinforced and validated by all manner of media. The fashion magazine *Marie Claire*, has a standing feature called "Splurge vs. Steal." *InStyle* magazine invites readers to "Steal This Look." Daytime television programs run regular segments devoted to knockoff dressing, as do the burgeoning cable fashion channels. There are also many Web sites devoted to knockoff fashion (among them: fashionknockoffs.com, knockoffs.com, edressme.com, fivestarreplicas.com and anyknockoff.com).

There is value — for companies and for innovation — in sanctioning imitation. The elite designers can charge a premium for their perceived superiority and "originality," and imitators can make money by catering to mid-market and lower-tier consumers who are not likely to buy the elite brands. While a counterfeit garment clearly steals revenue from a name-brand company, knockoffs paradoxically affirm the elite status of the original brand while having few harmful financial effects. Consider the vintage Valentino gown that Julia Roberts wore to the 2001 Oscars: Victor Costa knocked it off and sold hundreds of the gowns. Anyone who saw or owned the knockoff referenced its "original" designer, Valentino, even though none of the imitators purported to be a Valentino.

A brand name is, in essence, the commodification of socially created value. The "goodwill" of a brand represents



a social consensus that a brand “means” certain things and ensures certain standards of quality. Knockoffs help stabilize the lexicon of meanings in fashion, albeit inelegantly, while undercutting the counterfeiting that would surely result otherwise. The little black dress by Chanel, the wrap dress by von Furstenberg, the Izod knit shirt — each retains its brand-name value, in part, because knockoffs indirectly affirm the brand franchise of the “original.”

If counterfeiting is the illegal copying of someone else’s brand name or logo, and knockoffs are copycat designs that are sold to different market tiers, how shall we regard the verbatim copying of designs just for the hell of it? Some critics call it genius, others call it plagiarism. While few question the legality of verbatim rip-offs, fashion mavens have mixed feelings about the ethics of such practices.

A celebrated instance of plagiarism-inspired genius is the case in which Nicolas Ghesquière, a star designer at Balenciaga, knocked off a highly idiosyncratic 1973 vest by a little-known, deceased San Francisco designer, Kaisik Wong, as part of Balenciaga’s 2002 collection. The “borrowing” was disclosed by the “Chic Happens” column of the Web site Hintmag.com after the co-option of the design was discovered by an intern.³⁰ Ghesquière said that his design technique resembles sampling in the music business, and admitted that he had indeed copied the vest. Without embarrassment, he said, “I’m very flattered that people are looking at my sources of inspiration.” The novelist Tom Wolfe, who was a friend of Kaisik Wong’s, interpreted the incident rather differently; he complained that the stigma of copying should not be removed simply by calling it “referencing.” On many occasions, wags have quipped that homage is merely French for stealing.

When Harold Koda, the costume curator at the Met, was asked whether it was fair for a celebrated designer to steal from an obscure innovator and pass it off as his own without credit, Koda replied, “What about all the famous designers today whose collections are designed by anonymous assistants? Is that any more unfair?”³¹

The line between ordinary creative transformation and plagiarism virtually can be nonexistent in apparel. “Right now at Karen Millen you can find gold trousers remarkably similar to those at Prada,” wrote Charlie Porter of *The Guardian* (UK), “while Marks & Spencer are very proud of its animal-print kaftans which echo the ones shown at Yves Saint Laurent.”³² Indeed, a great many fashion experts believe that the best, most innovative work comes from the

artful recombination of existing work. Vanessa Friedman noted in the *Financial Times*: “It’s ironic then that the designers who face the plagiarism issue full-on are those who have produced the most thought-provoking and inventive work, in much the same way hip-hop artists about 20 years ago borrowed drumbeats from chart-topping tunes and created a new music genre.”³³

In fashion, at least, this debate is a matter of professional ethics, not a matter of law. The issue in the Ghesquière case was chiefly about the etiquette of crediting, or not crediting, an artistic source. In truth, the appropriation of a prior work is not just about the work itself; the *recontextualization* is at least as important in the creation of meaning. That’s why contemporary revivals of decades-old styles have a very different meaning than they originally did; the context is completely altered.

This is the strategy that designer Russell Sage played upon when he made clothes decorated with trademarked logos. Sage’s Fall 2000 collection included halters made from the linings of old Burberry trench coats, pleated skirts with Prada and Hilfiger ads photo printed onto them, and a Victorian evening gown with sequined Chanel and Vuitton logos. Sage’s point was to step out of the discourse of traditional fashion, as exemplified by elite fashion logos, and call attention to the ways in which designer clothes are associated with certain social tribes. He called the collection “So Sue Me.” Burberry did, in fact, threaten legal action and force Sage not to mention the word “Burberry” in the collection (his substitute, “reclaimed check.”)³⁴

A similarly playful commentary on the elite brands was made by companies issuing rubber knockoffs of the famous Hermès Birkin handbag. Should the colorful bags be considered a counterfeit of a trademarked bag design or a fully protected satire on fashion? Hermès obviously believed the former, and threatened legal action against anyone making or selling the bags. But the case caused some frisson because the creative norm in garment design is that anything is fair game. Fashion is part of an ongoing conversation, and therefore *of course* the “jelly bags” should be considered legal.³⁵ But since fashion accessories *can* be trademarked, Hermès had considerable legal leverage in banishing the send-ups.

Such collisions between trademark law and fashion’s free-wheeling creative spirit lead to perennial controversies. In 2003, for example, some clever imitations of Louis Vuitton handbags started appearing. They did not use the famous Vuitton logos (which would have constituted counterfeiting), but they did feature clever, suggestive imitations of the trademarked logos.³⁶ The copycats clearly were trying to evoke the Vuitton handbags without stepping over the line.

So goes the homage of imitation, which necessarily cuts both ways. When Anya Hindmarch used logos of food products on satin evening bags, the trademark owners actually paid her to use their logos. They considered it great visibility for their brands. It didn’t hurt that foods don’t compete with clothing in the marketplace. By contrast, Burberry has no desire for other designers to use the copyrighted Burberry plaid on other designers’ clothing.

It is a timeless tension: proprietary companies seeking control and subversive designers using bricolage to come up with “something new.” Unlike most other creative sectors, fashion has chosen the open-ended horizon for itself. Innovation cannot be squelched simply because the first mover is fearful that his market franchise might be diminished. Fashion has thrown its fate in with George Bernard Shaw’s aesthetic ethic: “In art, the highest success is to be the last of your race, not the first. Anybody, almost, can make a beginning; the difficulty is to make an end — to do what cannot be bettered.”

THE FUTURE OF CREATIVITY

There is little doubt that fashion presents a distinctive milieu for creative endeavor, one that illuminates the market benefits that can flow from a “ready to share” creative environment. But do its dynamics hold lessons for other creative sectors?

We are struck by the remarkable similarities between the creative ecology of fashion and those of digital media. While the creative milieu of fashion is unique in many respects, the success of its framework for creativity suggests that it might have broader lessons for the digital age. It is striking, for example, to observe how in both fashion and many digitally based creative communities, new ideas arise

“Those who do not want to imitate anything, produce nothing.” — *Salvador Dali*

and circulate with few impediments of either market access or intellectual property law. Sharing, collaboration and modification of other people's works occur naturally, almost automatically, and at a breakneck pace.

Open-source software may be the most celebrated example of this creative dynamic. In open-source communities, hundreds and sometimes thousands of creators openly appropriate and modify a shared body of software code to build new programs that suit their purposes. Like the design archetypes of fashion, which serve as shared models for constant innovation, open-source software has any number of shared scripts of code that are the basis for customized applications. The GNU-Linux computer operating system may be the most prominent example, but there literally are thousands of sophisticated open-source programs that are functionally competitive with proprietary software, albeit with a key difference: They invite anyone to change, modify and improve the existing code.

The Internet itself fosters this sort of creativity because of its structural architecture. It relies upon open technical protocols for communicating among countless computer networks, so there is no central authority dictating how creativity may or may not occur on the Internet. All activity is radically decentralized, which means that most creative innovation emerges from “on the edge” of the system, not from the center. Anyone with a new idea can launch it and transmit it to a global community with few impediments.

In this respect, the Internet functions much like “the street” in fashion. It is a rich and important source of creative inspiration. Recall that the street is an open, bustling place filled with unpredictable new ideas. It is a constantly churning world of innovation and surprise that the proprietary world depends upon for new ideas, and against which they compete.

One can find a parallel between fashion and the street on the one hand, and Web logs (or “blogs”) and the mainstream media. Blogs are a form of personal diaries and news platforms for individuals and communities of shared interest. More than a way of “broadcasting” individual views, blogs have extensive links to other bloggers who are like-minded and admired. This cross-linking — among an estimated 8 million bloggers — has created a fantastically powerful network for the viral diffusion of information.

In many respects, the mainstream media must keep pace with bloggers in much the same way that Levi's or the Gap must keep pace with the street. In both instances, the proprietary businesses look to the creative commons for potentially important new ideas. There may be a lot of dross — bad ideas, unsubstantiated facts — but the aggregated power of large numbers of people on the street, or in the blogosphere, is a creative force that cannot be ignored.

There are, in fact, many instances of this dynamic on the World Wide Web. Many Web sites are vehicles for collaborative creativity or archiving of community information. Genealogical Web sites assemble vast quantities of research data, for example. The Wikipedia project is a massive “encyclopedia” consisting of more than 500,000 entries written entirely by users. Many smaller “wiki” projects work on the same dynamic of pooling the work of thousands of voluntary contributors. There are fan communities that share their fictional stories about Star Trek characters and television stars. There are peer-to-peer file sharing communities of scientists (having nothing to do with illegal music downloading) who share documents and databases as a group.

It is difficult to generalize about the eclectic types of sharing going on over the Internet, but one rough common denominator is a bricolage model of creativity. While there are nominal boundaries for ownership of content (copyright law still applies in an official sense), in practice these communities tend to appropriate, modify and share digital materials with great abandon. In this, the creative process used by digital artists and authors resembles that of fashion: Each innovator-imitator freely draws upon the building blocks of the past and, indeed, all of culture.

The quick-and-easy excerpting of content in digital media fuels the viral diffusion of creativity in the networked environment. The similarity to fashion is obvious, as a new fashion style quickly sweeps the culture and the marketplace in a matter of weeks. Because there are few barriers to participating in the decentralized marketplace — either from high costs or intellectual property restrictions — creative innovations can proliferate with remarkable speed. Some styles turn out to be fads and die out; others prove useful, and persist and grow. No one could have predicted that Levi's jeans or the Chanel black dress would become

new archetypes. Fortunately, the creative environment allowed them to emerge and find consumers. So too, on the Web, no one could have predicted that MoveOn.org would attract 2 million contributors and become a major force in the 2004 presidential election, or that blogs like Boing Boing, with a daily readership of nearly 1 million Internet users, exceeds that of many mainstream magazines. Who could have predicted that the *Grey Album*, an artist's mash-up of The Beatles' *White Album* and Jay-Z's *Black Album* — would be downloaded 1 million times, more than the sales of the best-selling album at the time, Norah Jones' *Feels Like Home*.

There are significant differences, of course, between the viral diffusion of content and the viral diffusion of fashion. Apparel is a physical product, and requires fabric and manufacturing for production, and still further expense to distribute. Digital content can be distributed for virtually nothing over the Internet. But the larger point is that creativity in both “ecologies” is fairly fluid and unimpeded. While it is probably premature to adopt a theoretical model for innovation in fashion or the Internet, the similarities between the two are clear enough to suggest that it is time to develop a new narrative about creativity. Forays into both realms reveal that creativity is by its very nature a messy process that flourishes in open environments with minimal limitations. The best creativity is elusive, unpredictable and ungovernable. It loses its vitality if it is forced to remain static, and it cannot be defined easily. It thrives without borders and suffers from having to live within boundaries.

We are drawn back to the metaphor — of black, white and shades of gray. The worlds of business and the law prefer the absolutes of black and white. Investors and lawyers are in the business of minimizing risk; they prefer legal rules that are clear and business models that yield predictable results. Companies that wish to thrive in fashion, digital media or any other field therefore strive to enthrone the black-and-white framework — and to minimize the “gray zone” of creative endeavor — by rationalizing it as much as possible.

This creates a structural tension with the creative spirit, however, because authentic creativity is about following one's passions and emotions without regard for official boundaries. If the world of “ready to share” in fashion reveals anything, it is that a delicate rapprochement must be negotiated between the champions of black and white absolutes that business and lawyers embrace to compete in the marketplace, and the blended tones of gray that are the preferred domain of creators. Finding new ways to balance intellectual property law and embedded business practices with the free-wheeling spirit of creatives is of the utmost importance. We believe that the fashion industry offers many constructive lessons for how this challenge can be met. ♦

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“Science and art belong to the whole world.” — *Goethe*



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David Bollier is a senior fellow at the Norman Lear Center and co-founder of Public Knowledge, an advocacy group dedicated to defending the commons of the Internet, science and culture. Since 1984, he has been a collaborator with television and film producer Norman Lear on a wide variety of projects. Bollier also works as an independent strategist and journalist specializing in issues of progressive public policy, digital media and democratic culture. Bollier's recent work has focused on developing a new vocabulary for reclaiming “the commons.” The commons refers to the diverse array of publicly owned assets, gift-economies and natural systems that are available to everyone as a civic or human right. Bollier's critique of the commons is set forth in his 2002 book, *Silent Theft: The Private Plunder of Our Common Wealth* (Routledge), and in a number of essays and reports. He has developed the notion of the information commons as a new paradigm for understanding the public interest in the digital, networked environment. His latest book related to the subject is *Brand Name Bullies: The Quest to Own and Control Culture* (Wiley, 2004). Educated at Amherst College (B.A.) and Yale Law School (M.S.L.), Bollier lives in Amherst, Massachusetts.

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▶ A bevy of styles from times gone by are reinvented in Kevan Hall's 2005 Spring collection, modeled at the conference.



BY ARAM SINNREICH
AND MARISSA GLUCK

MUSIC & FASHION:

THE BALANCING ACT BETWEEN CREATIVITY AND CONTROL

In June 2002, underground music phenomenon DJ Z-Trip signed a recording contract with Hollywood Records, home to teen pop sensation Hilary Duff and veteran television personality Regis Philbin. While there is nothing new or unusual about underground musicians making uneasy alliances with mainstream record companies, this was a notable event for two reasons. First, Z-Trip's music was made entirely from samples of other songs, none of which had been licensed prior to the signing of the record contract. Second, Hollywood Records is a division of the Walt Disney Company, which arguably has been the most aggressive proponent of intellectual property control in the entire media and entertainment sector.¹

Z-Trip is one of the pioneers of the mash-up, also known as "bootleg" or "bastard pop." This new musical style, which emerged only in the last five years or so, has two basic rules: First, all the source materials must be recycled. Vocals, accompaniment, ambient noise and anything else that goes into the mix must be sampled from an already existing piece of recorded music. Often, this means the vocal track from one song is "mashed" with the instrumentation from another. However, a single mash-up can incorporate samples from hundreds of songs.² The other rule of mash-ups is that the samples must be combined to make something new and surprising. In the words of one bootleg artist, "A good mash up / bootleg is a culture clash ... styles that shouldnt [sic] work together but do."³

Predictably, things have not gone smoothly for Z-Trip's music at Hollywood Records. After years of legal acrobatics, the company was able to license only a handful of the dozens of samples on Z-Trip's album. There are many reasons why the record label may have failed to obtain the blessings of these copyright owners. Some may have had a strict "zero sampling" policy, prohibiting derivative works of any sort to be created. Others may not have understood what a

mash-up was, and weren't willing or able to take the time to learn. Some copyright owners may have been difficult or even impossible to track down. Ironically, all of these hurdles can be traced to the system of rigid copyright control that the Walt Disney Company successfully has lobbied to create over the past several decades. In other words, it was hoisted by its own petard.

Hollywood Records finally did release DJ Z-Trip's major-label debut album, *Shifting Gears*, in April 2005 — after a lag of nearly three years from the artist's initial signing date. In that time, mash-ups progressed from underground art form to mainstream fare distributed by MTV, Lollapalooza, and *Wired Magazine*. These newer mash-ups differ from Z-Trip's underground work in one respect: They are composed of a small pool of sanctioned, *pre-licensed* samples, which were given to the artists with the express purpose of being mashed. Gone is the innovation, the "culture clash" that defined the form in the first place. In its stead is an often predictable, homogenous product that arguably functions more as a marketing pitch for the source materials than as a new and independent work of art. In the words of French economist and music theorist Jacques Attali, "inducing

people to compose using predefined instruments cannot lead to a mode of production different from that authorized by those instruments.”⁴ Or, as *The New York Times* recently predicted, “the mainstreaming of the mash-up ... may end up killing the genre.”⁵

Z-Trip’s record for Hollywood, indeed, more closely compared to these newer mash-ups, and likely lacked the samples the company was unable to license. Before its release, music journalist Bill Werde, who has reported extensively on mash-ups for *Rolling Stone* and *The New York Times*, speculated, “This album will not resemble anything Z-Trip has built his following on. Whatever does come out will be a very sanitized version.”⁶ In his later review of the album, Werde noted, “*Shifting Gears* doesn’t have the novelty of Z-Trip’s earlier work.”⁷

The moral of this story is fairly straightforward. Intellectual property laws theoretically are supposed to encourage innovation, prevent theft and reward artists. However, in the case of DJ Z-Trip, they did just the opposite. An innovative musician was delayed for years from sharing his work with the market, and in order to do so, he had to change it to make it more derivative and less original. As we shall discuss in this paper, such outright dysfunction is the norm, rather than the exception, in the music industry today.

It would be difficult to find a case analogous to DJ Z-Trip’s in the world of fashion. In the fashion industry, sampling, derivation and reappropriation all are accepted and common forms of creative innovation. Indeed, the creative process today is almost wholly reliant on forms of re-use and has deftly avoided the kind of fracas the music industry⁸ faces over intellectual property protections. However, there still are powerful institutions that help navigate the murky waters that separate legitimate influence from theft. Without the “thick” copyright protection afforded to the music industry, fashion depends more heavily on social regulation and a primitive but highly functional watchdog — shame.

Fashion is perhaps the most cyclical of all design industries. As with music, ideas and aesthetics constantly have been recycled, particularly from the 1930s to the present. Sleeves, collars, skirt lengths, patterns, fabrics, buttons and hems all are elements with seemingly infinite permutations,

but in reality there is a fairly limited aesthetic vocabulary, with the proven successes cropping up again and again. What makes fashion distinct from other culture industries, however, is its willingness — perhaps its imperative — to acknowledge sources of inspiration. Inez Brooks-Myers, curator of costume and textiles at the Oakland Museum of California, explains:

Designers will say they were inspired by the gingham that Adrian used or inspired by the patchwork skirts that Rudi Gernreich did. They will acknowledge inspiration, copying and borrowing heavily. There is a nuance of change but they acknowledge the source of inspiration. I don’t know if that happens in other industries.⁹

On rare occasions, a fashion designer will cross over the invisible line separating influence from theft. One example is particularly illuminating. In 2002, Nicolas Ghesquière, head designer of couture house Balenciaga, produced an embroidered patchwork vest for its spring collection. Not long after it hit the market and the fashion magazines, the fashion Web site Hintmag.com revealed it to be a stitch-by-stitch replica of a design created in the 1970s by a then-young, somewhat obscure Chinese American designer in San Francisco, Kaisik Wong. The vest originally was produced in 1973, and was photographed and included in the 1974 book *Native Funk and Flash*. Mr. Ghesquière claims that at the time he produced the vest he was not familiar with Kaisik Wong or his designs, and he has said in interviews he thought the original vest that influenced him was from a theatrical costume.¹⁰ When Balenciaga produced the imitation, Mr. Wong had been dead for more than a decade, minimizing the risk of exposure or legal action against the company.

Ghesquière is one of the few designers ever to be criticized for copying, and perhaps was singled out only because he failed to state the source of the original design. “Giving credit where credit is due” is one of the unwritten maxims of the fashion world. By not crediting the source of his design, Mr. Ghesquière risked the scrutiny of the fashion community; suddenly his talent — and therefore his livelihood — was called into question. While this sole misstep has not hurt his career in the long run, the murmurs of doubt



1. Jonathan Taplin, former tour manager for Bob Dylan and The Band, moderates a session on music ownership.

2. Brian Burton aka Danger Mouse answers tough questions about his illegal mash-up, the *Grey Album*.

3. Singer-songwriter Sam Phillips brings up her conflicts over unauthorized use of music samples, but ultimately asks Danger Mouse to “please mash me.”

about his credibility unquestionably served as a warning against repeat offenses — as well as a warning against theft to the fashion community as a whole. As Cameron Silver, fashion expert and owner of high-end vintage store *Decades* cautions, “The incident doesn’t die. When Ghesquière passes away, his obituary will mention two things: the bag [he designed] and the Kaisik scandal.”¹¹

This example underscores the subtle yet effective way in which the fashion community regulates the industry through social mores, codes and conventions, in contrast to the dense copyright protection and brute legal force that characterize the music industry. This difference is not simply a matter of preference or predilection; as we will discuss later, there also are structural features specific to fashion that regulate copying. These include the pace of innovation (which generally renders legal actions moot); the fairly fixed number of garment genres and styles (which virtually requires that copying be allowed lest a genre or style be monopolized); and the philosophical refusal of copyright law to protect functional items.

But is this a meaningful comparison? Are there significant similarities between the creative communities and social forces that drive fashion and music? If so, what accounts for the drastically different industries that have emerged to enable and profit from them? Why is it that, despite its stringent approach to intellectual property, sales of music in America dropped by 6 percent in 2003, while fashion sales in the U.S. grew by 5.4 percent?¹² And, given the pace of technological change and the ever accelerating cycles of innovation

and obsolescence, is there any lesson the music industry can learn from fashion’s success in balancing creative demands against market forces? These are the questions we aim to address in the following pages.

MUSIC AND SOCIETY

Music is so deeply entrenched in our lives that we tend to take it for granted. It is an intrinsic part of our environment, either as the focal experience (i.e., listening to a CD, going to a concert), as background noise (i.e., waiting rooms, parties) or as an enhancement to visual information (i.e., movie soundtracks). Music is so common in these contexts that its absence can be disturbing. People in silent waiting rooms often can be heard humming to themselves or tapping their feet to compensate for the quiet. Similarly, a movie devoid of music, such as Alfred Hitchcock’s classic 1963 thriller, *The Birds*, can be far more unsettling than one with a normal soundtrack.

Music’s ubiquity can be traced to two defining features: its invisibility and its power. All sound is, of course, invisible by definition. It vibrates at a different range of frequencies, and acts upon different sensory organs than visible information. Its technical invisibility also gives it a social invisibility. This is especially true in our ocularcentric culture, which prizes the eyes over the ears.¹³ We devote so much of our attention to what we see that we rarely think about what we hear. Thus, music becomes a kind of stealth agent, influencing our thoughts and feelings while it hides in plain “sight.”

This stealth would be meaningless, however, without

the power that it helps to obscure. The power of music has been extolled, debated and exploited at least since the beginning of written history. In *The Odyssey*, Circe warns Ulysses of the dangers of the music of the Sirens:

If any one unwarily draws in too close and hears the singing of the Sirens, his wife and children will never welcome him home again, for they sit in a green field and warble him to death with the sweetness of their song.¹⁴

Today, music’s power is still in abundant evidence, from the tens of billions of dollars Americans spend on CDs each year to the focal role music plays in social and political change, such as the civil rights movement. This power can be traced to three spheres of human life in which music exerts a phenomenal degree of influence: cognitive, social and commercial.

Recent research has established that music is a vital factor in the cognitive development of children, and even may have played a central role in the evolution of the human mind.¹⁵ This finding is no doubt evident to readers in their own lives. From the traditional “Alphabet Song” to the current craze for Baby Einstein products, music has been linked inextricably with the process of imparting knowledge and values to children from infancy onward.

Similarly, researchers have identified numerous ways in which music both produces and reflects social structures. Attali writes that “all music, any organization of sounds is ... a tool for the creation or consolidation of a community.”¹⁶ Music serves less grandiose social purposes as well. Media research has identified scores of different “uses and gratifications” for people’s interaction with music, ranging from social lubrication to political message dissemination to personal mood management.¹⁷

Finally, music has become a commercial entity — a development we will examine at length in this paper. For now, suffice it to say that music is both a product in itself (when distributed via CDs, radio or downloads, for instance) and an essential component of our commercial system (in the form of advertising jingles, theme songs, etc.).

FASHION AND SOCIETY

While music derives much of its power from its invisibility, fashion is one of the most visible markers we have in contemporary society to express affiliation, lifestyle choice and identity. Yet paradoxically, its utter ubiquity also affords it a status — similar to that of music — beyond questioning or criticism. We may make decisions about what clothes to buy, or what shoes to wear, or cattily dismiss someone’s choice of apparel, but few of us ever stop to wonder why fashion exists, why it changes so rapidly or what those changes mean about our society.

Consequently fashion, like music, enjoys a social power that far exceeds its apparent role in our lives. A hat is never just a hat, and we rarely wear one simply to guard against the cold. Arguably fashion is *by definition* the symbolic coding of social power through apparently innocuous means such as shape, texture or color. This is evident in the breadth and scope of its social functions. It has been used as an index of social rank in Victorian England, and as a gauge of social mobility in 20th century America. It has been used to express ideological conformity and allegiance, as in the case of the Mao Suit, and social unrest or nonconformity, as in the case of the 1960s Flower Power movement. Throughout time, fashion has been used to communicate a dizzying array of social signifiers, such as class, gender, occupation, regional identity and religion.¹⁸ The brilliance of fashion is that, for the system to work, all people have to do is wake up in the morning and get dressed.

Although fashion may seem innocuous and simple on an individual level, religions, governments and other large organizations long have seen the value of fashion as a form of social control, dictating uniforms and dress codes, and prescribing and proscribing everything from shoes to hats to underwear. In the Middle Ages in England, for example, livery — uniform clothing or the badge or cloak color of the lord’s family — was heavily regulated. If a person took a nobleman’s livery, he became his servant and owed him loyalty and other required services. A liveried servant also shared his nobleman’s identity to a certain extent, granting him legal privileges he would not have enjoyed otherwise.

Similarly, during Elizabethan times, Sumptuary laws restricting lavish dress were passed in order to maintain the

boundaries between the nobility and the rising bourgeoisie. Elizabethan lawmakers feared that “letting anyone wear just anything must lead inexorably to moral decline. If you couldn’t tell a milkmaid from a countess at a glance, the very fabric of society might unravel.”¹⁹

Fashion, like music, was redefined by the advent of modern capitalism. In contemporary society, fashion serves as a commercial entity, driven by the same forces of manufactured demand and planned obsolescence that characterizes everything from movies to breakfast cereals to presidential candidates. This commodification of fashion historically has interacted with America’s social mobility and class competition, in effect producing an almost feverish obsession with fashion among many Americans, particularly women.

In the last few decades, as more traditional notions of social class have given way to increasing fragmentation based on cultural interest, consumers have had greater freedom to construct their social identities based on other parameters, such as participation in certain fashion-related lifestyles. Leather-clad dominatrix, polo-wearing Connecticut preppe and So-Cal surfer all are accessible identities to anyone with a credit card. To paraphrase *Hamlet’s* Polonius, “the clothes make the man.” This change, from class identification to lifestyle articulation, suggests that fashion offers a greater level of individual agency today than in earlier eras. In contemporary culture, “consumption is conceptualized as a form of role-playing, as consumers seek to project conceptions of identity that are continually evolving.”²⁰

Thus, both music and fashion act as social stealth agents, regulating and reflecting cultural roles and expectations while eluding scrutiny through their ubiquity. Music’s stealth is aided by its literal invisibility, while fashion functions in spite of, and because of, its hypervisibility. In contemporary society, both music and fashion generally are regarded in primarily capitalistic terms. Songs and apparel are conceived of as products, and most people relate to them as consumers. However, both music and fashion originate within creative communities, which are built on a different kind of relationship: that between an artist and a work.

MUSICAL COMMUNITY AND COMMONS

Most everyone can agree that, as Leonard B. Meyer puts it, “music has meaning and ... this meaning is somehow communicated to both participants and listeners.”²¹ In other words, music, like all activities that come under the rubric of “art,” is a fundamentally communicative and therefore social act.

As Meyer observes, music can be addressed to two kinds of audiences: “participants” and “listeners.” Although this distinction may seem intuitively obvious, there is an immense gray area between these two extremes. Dancers, people clapping in time to the beat or musicians playing along with recordings all are difficult to categorize according to this dichotomy.

There are social, political and economic reasons for the existence of these two opposing roles. As Attali argues, the distinction of musicians as a separate category of individual originally served to strengthen and legitimize hierarchical social and political structure during Europe’s feudal era.²² Later, of course, the musician-listener dichotomy would come to echo and reinforce the producer-consumer relationship that drives the capitalist system. As we will argue later in the paper, we believe this distinction has ceased to be useful (if it ever was), and actively is preventing our society from allowing music to progress in the current era.

As a social phenomenon, music takes place within communities. From the collective worship of a church choir to the performance of the national anthem at a baseball game to a freestyle competition at a hip-hop club, music often serves to define and unite a group of people with one another and with other groups of people. Like fashion, it is an essential element in social identity, both a bonding ritual and a kind of aesthetic shorthand for categories ranging from age to ethnicity to sexual orientation.

But if music occurs within communities, it is also rooted within Community. Music is an ever evolving language, the lexicon and grammar of which constantly are being updated and negotiated by musicians around the world. This ongoing dialogue constitutes a community that transcends the boundaries of region, style and even period. Practicing musicians, for instance, tend to have knowledge of and expertise in a range of styles far broader than the ones they

“Every generation laughs at the old fashions, but follows religiously the new.” — *Henry David Thoreau*



typically perform.²³ Thus, music can have meaning or power only in the context of other music. Put another way, music dwells in the differences between sounds, not in the sounds themselves.

If difference is the mark of music, then innovation is the engine that drives it. Difference can only exist by dint of innovation. Despite the resistance of some academics, critics and other purists to change, and attempts to confine music within known parameters,²⁴ it is amply clear that one of the characteristics all music shares — from the traditional songs of Tuva²⁵ to the most synthetic products of the American pop market — is an ever changing nature, fueled by the mechanisms of reinvention, reinterpretation and recombination. As music sociologist Hugo de Jager writes, “The sum total of available elements in a society (which is called its ‘cultural base’) influences the number — and perhaps the kind — of innovations a composer living in that society can make.”²⁶

Thus one may argue that innovation springs from collective access to the creative commons in music, as in other creative communities.²⁷ This means that all musicians may draw on a common set of ideas and materials, and that each new composition or performance instantly joins that commons as soon as it becomes publicly available, by whatever means.

In some cases, this is a subtle and sweeping process that sets the rules for all who follow, as when J.S. Bach redefined Western harmony, or when Charlie Parker revolutionized improvisation in American music. In other instances, the process can be more visible and less widely influential, as when one musician reinterprets or samples another’s work. Either way, every musician is engaged in an ongoing dialogue with all other musicians, past, present and future. This truth has been acknowledged frequently by musicians themselves. As jazz saxophonist John Coltrane once said, “It’s a big reservoir, man, that we all dip out of.”²⁸ Similarly, musicians ranging

from Hungarian classical composer Zoltán Kodály to world-famous Pakistani Qawwali singer Nusrat Fateh Ali Khan to American jazz drummer Buddy Rich all have been quoted independently as saying: “Music belongs to everybody.”

FASHION COMMUNITY AND COMMONS

As with music, fashion encompasses a large gray area between the extremes of consumers and producers. This gray area, in which creative thinkers draw upon an ever growing and constantly circulating pool of common memes, is arguably the source of new ideas and trends within the fashion industry. Sociological literature on innovation describes it as an interactive process, dependent upon cumulative knowledge and the capacity for interchange between individuals, institutions and organizations. Academic research on fashion echoes this definition. As Vincent B. Leitch writes, “innovation in fashion is less a matter of creativity *ex nihilo* than of mutation and pastiche.”³⁰ In fashion today, innovation continues to thrive as its central practices — foresight, flexibility and cooperation — flourish in a fairly open and unfettered creative commons.

While fashion, like music, is a global community — fragmented, multifaceted and highly stratified — it also is tied to an industry that reaps the benefits of agglomeration economies, or the types of spatial concentration that create advantageous economic conditions, resulting in sustained or increased concentration.³¹ Thus, Paris has remained a central node in the global fashion economy, along with New York and Milan, and London, Tokyo and Los Angeles serve as a second tier. Designers tend to live and work in one or more of these cities, as do buyers and merchandisers, and design schools such as Parsons School of Design in New York and Central Saint Martins College in London are located in these fashion centers. Of course, the actual production of most clothing, with the exception of haute couture or signature collections, is outsourced to the third world, mainly to Asian countries.

The career of most designers is a peripatetic one, moving between companies every few years. Fashion design, like entertainment, depends more and more on blockbusters. One bad collection can sink a design team. As Richard Wheeler, an accessories designer at Ann Taylor,

commented, “Teams don’t stay in place for more than a few years. If there is a bad season, it’s always seen as the designer’s fault. You fire the designer and hire a new team.”³² This approach helps to create a community that is fairly fluid, with talent, ideas, individuals and aesthetics constantly circulating within a relatively limited sphere.

Both music and fashion owe their existence to globalized creative communities, which thrive on the continual circulation of ideas and mining of the creative commons. Unlike technological or industrial development, in which new objects and ideas may be discovered (e.g., Neptune, penicillin) or invented (e.g., airplanes, zip codes), both music and fashion rely on innovation — the reshuffling of known elements into unique and surprising patterns — for creative advancement.

Thus, in order to innovate effectively, musicians and fashion designers *must* operate within environments that grant them access to ideas and the permission to use them in new and creative ways. Neither community exists in a vacuum. Both function within highly structured industries that have emerged over the years to enable and exploit the fruits of creative endeavor. These industries have a constraining effect on the creative communities by continually pitting the financial, legal and structural imperatives of their own continuance against the needs of the artists themselves. Often, this means restricting access to the creative commons. In order to understand how market forces came to exert such control over music and fashion, it is useful to examine the histories of these industries.

MUSIC INDUSTRY HISTORY

The history of the music industry is, arguably, one of increasing institutional control, narrowing access to the means of production and distribution, and a widening gap between music’s social origins and its commercial role.

In early traditional societies that lacked the capacity to turn music into a static object, either through the printed score or through recording technologies, music was synonymous with live performance. This living music was, by and large, integrated into the fabric of life and shared among the community in a way people in our society scarcely can understand. As Attali writes of music in the Middle Ages, “The circulation of music was neither elitist nor monopolistic

of creativity ... music in daily life was inseparable from lived time, in which it was active and not something to be watched.”³³ Similarly, music historian Eileen Southern writes that “for every activity in the life of the individual or the community there was an appropriate music; it was an integral part of life from the hour of birth to beyond the grave” in West Africa during the slave trade years of the 17th through the 19th centuries.³⁴

Despite the vital role music played for members of traditional society, there was often what amounted to a class of professional musicians — composed of individuals assuming inherited positions — whose job was to serve not only as entertainers but also as traveling cultural historians, news distributors and political propagandists. The griots of West Africa, jongleurs and troubadours of Western Europe and bards of Ireland all fit this description. These professional musicians became more and more estranged from society, however, as centralized political and religious powers arose and put a stop to their itinerancy. In Europe during the 16th century, Attali writes, “musicians became professionals bound to a single master.” The feudal courts “banished the jongleurs, the voice of the people, and no longer listened to anything but scored music performed by salaried musicians.”³⁵ This officially sanctioned professionalization was the beginning of a long process by which powerful interests gradually would remove music from the public sphere and control its distribution for religious purposes or political or financial gain.

The next major development along these lines was the creation of the printing press, and with it, the idea of copyright. This concept has been a double-edged sword for musicians and musical culture since its inception. Although it provided an opportunity for composers to achieve both cultural renown and financial compensation for their work, it also is evident that “in the beginning, the purpose of copyright was not to defend artists’ rights but rather to serve as a tool of capitalism in its fight against feudalism.”³⁶ In other words, the benefit accruing to musicians was incidental to the primary aim of establishing a financial system based on the control of creative expression. Media scholar Siva Vaidhyanathan reminds us this set-up is still very much in place since “copyright issues are now more about large corporations limiting access to and use of their products, and less about lonely songwriters snapping their pencil tips under the glare of bare bulbs.”³⁷ As we will discuss, this function of copyright is especially problematic when it comes into conflict with the mechanism at the

heart of any creative community, namely the free flow of ideas.

With the development of the printed score, music became a commodity that could be bartered for cash, akin to food or clothing. This commodification was reflected in performed music as well, with the development of concert halls and ticket sales. Music was removed from its function at the heart of everyday life and placed on a shelf, or behind a proscenium, where only those who were willing and able to pay could access it. Meanwhile, the music of the streets atrophied, as new musical traditions rooted in professional expertise and requiring the use of expensive equipment overwhelmed the old aesthetics.

With the advent of sound recording at the end of the 19th century and radio broadcasting at the beginning of the 20th century, the encapsulation of music within a capitalist framework was completed. A new class of organizations, such as record labels and radio networks, emerged to monopolize the channels of distribution between musical performers and their audiences, now two separate social categories. New and more elaborate conceptions of intellectual property emerged to protect the interests of these organizations, and new financial structures based on the economies of mass production emerged to support them.

These developments affected people’s relationship to music. One effect of the emerging mass market music economy was that the cost of manufacturing products was eclipsed by the cost of manufacturing demand.³⁸ Today, the majority of expenditures by record labels are related to marketing and promotion, rather than production and distribution. Music sellers now spend billions of dollars each year attempting to persuade customers to purchase something they used to manufacture freely for themselves and for one another. Ironically, music becomes even more peripheral through this process, as songs essentially are sales jingles advertising the discs on which they are recorded. Similarly, live performances primarily have become showcases for recorded music, an inversion of their original relationship.³⁹

This situation reflects another, larger inversion at the center of musical culture today. If the music industry originally developed as an ancillary to musical community, today the community serves as an ancillary to the industry.

FASHION INDUSTRY HISTORY

For centuries, clothing design and production were under the purview of mostly anonymous dressmakers and seamstresses,

and were not yet dictated by the proclamations of famous, individual designers. In the 18th and 19th centuries in the U.S. and Europe, clothes had not only symbolic influence but also economic currency. For many working-class families, clothing comprised a significant percentage of their material worth. In France, a suit purchased at the time of a young working-class man’s marriage literally was expected to last a lifetime, and worn to church, weddings and funerals. In England, clothing was somewhat limited to the working classes, and low income families formed clubs to save enough money to purchase clothes.⁴⁰

Until the 18th century, fashion was the province of the upper class, and production was done by hand. Advances in technology and industrial manufacturing in mid-18th century Europe engendered the rise of the textile and apparel industries. The industrial revolution also meant a rising standard of living for the working and middle classes, suddenly allowing them to buy much less expensive, mass-produced versions of Parisian haute couture.

At the end of the 19th century, with the advent of mass production, clothes became even cheaper and more accessible to the working classes. As a result, clothing and fashion first became democratized, and, as Diane Crane argues, this evolution was most evident in the United States because of its fluid social structure. By the early 20th century in America, consumers were buying haute couture copies in the recently founded department stores and retail catalogs. Some were sold as approved “reproductions” of European designs but the majority consisted of unauthorized knockoffs.

Despite France’s dominance in the decorative arts (e.g., furniture, porcelain and silver), it was Charles Frederick Worth, an Englishman living in Paris in the mid-19th century, who first established the concept of the fashion designer as an autonomous artist. Worth founded his *maison couture*, the House of Worth, a name that simultaneously established the centrality of the designer to fashion and conferred brand-name status on the designer himself.

Succeeding Worth at the forefront of fashion design was Paul Poiret, who not only waged war against the corset but also established what is now thought of as haute couture. In the 20th century, many of today’s most famous and most expensive brands were established, including

Chanel, Balenciaga and Dior. As with Worth and Poiret, these brands almost were inseparable from the designers, who often expanded beyond haute couture into other artistic disciplines and entertainment endeavors. For example, Coco Chanel often dabbled in costume design. She designed the costumes for Jean Cocteau’s 1924 operette-danse, *Le Train bleu*, and again for Gloria Swanson in the 1931 film *Tonight or Never*. She also collaborated with Jean Renoir in 1938, designing the costumes for *La Marseillaise*.

Thus, like music, fashion design is an aesthetic practice taking place within artistic communities. However, unlike most music, fashion must meet the added requirement of functionality.⁴²

Over the past century, fashion has undergone a transformation in everything but name. The history of the fashion industry in the U.S., in contrast to that of music, reflects a continuing resistance to oligopolistic control and strict intellectual property controls. While there is a widening gap between music’s social origins and its commercial role, in fashion the two coexist in relative peace.

For many decades, haute couture dictated fashion trends as designers, on high, came down from the proverbial mountain twice a year to dictate to their upper-class customers, decreeing the height of their hemlines, the silhouette of their shoulders, and the appropriateness — or not — of pleats. Design houses usually were owned by their designers, clothes were still produced by craftspeople domestically and the fashion community was fairly small, centered in Paris. Thus, while styles changed from season to season, the fundamental structure of the business remained stable.

By the 1960s, haute couture’s stranglehold on fashion was beginning to weaken. Hollywood films, television, rock music, youth culture, the woman’s movement and revolutionary politics all served to destabilize the top-down fashion paradigm, with trends generated by consumers (particularly the younger ones) rather than the large couture houses. The further democratization of fashion could be seen in the establishment of numerous casual wear companies such as the Gap (1969), Ann Taylor (1954) and J. Crew (1983). Such changes in the fashion industry were precipitated by the underlying cultural, political and social shifts following World War II. American consumers, finally

liberated from the shackles of the Great Depression and infused with a sense of self-sufficiency and national pride, adopted a far more active role. They no longer were content simply to accept the dictates of Paris, Milan and New York. Consumers were usurping the autonomy of producers, and the relationship between the two has been complex and tenuous ever since.

If these changes reflected social evolution, they also were enabled by legal developments. During the 1940s in the United States, several crucial legal decisions established the validity and value of knockoffs, sampling and reappropriation in the fashion industry in the name of healthy competition. For instance, in 1940 the *Millinery Creators' Guild v. FTC* decision determined that piracy in fashion triggers a downward force on pricing, making it a socially desirable form of competition. Similarly, a year later, the judge in *Cheney Bros. v. Doris Silk Corp.* rejected a request to prohibit design piracy on the grounds that such a prohibition would grant a de facto monopoly to designers, who formally are denied patent and copyright protection. Thus, the fashion industry consistently and intentionally has been denied the legal protections afforded to other design industries, in order to maintain a healthy creative ecosystem and the continuing availability of diverse, inexpensive products to the American consumer base.

The changes in the fashion industry during the mid-to-late 20th century contributed to a creative climate in which designers influence and draw influence from one another. Fashion is a chaotic if highly stratified industry, and the directional flow of aesthetics is now top-down, bottom-up and side-to-side. Ideas flow in every direction, so any attempt to pinpoint the creative forebears of any given garment (unless it is an *exact* copy) is an exercise in frustration and futility.

The advent of the modern media system in the 20th century also had an enormous impact on dictating fashion. Cultural icons such as musicians, actors, celebrities, royalty and political figures came to influence trends. Today, newspapers, magazines and Web sites report daily on what Beyoncé, Cameron Diaz and the Bush Twins are wearing. The role of media and entertainment as mediators between designers and consumers, in the form of the myriad maga-

zines, TV shows and even films about fashion, cannot be understated. While the aesthetic inflection points between celebrity and fashion are beyond the scope of this article, suffice it to say that the constant flood of entertainment-focused media has turned celebrities (and their stylists) into the new authorities on fashion trends.

Thus, the music and fashion industries evolved quite differently, despite their similar origins. The music industry grew to exert ever more rigid and consolidated control over musical expression, to such a degree that the creative needs of musicians and music listeners have taken a back seat to the financial needs of the marketplace. The fashion industry, however, has evolved with a healthier balance between creative and economic demands, offering consumers and aspiring designers a greater degree of control and agency than they enjoyed a century ago. These divergent paths have produced significantly different legal, economic and organizational structures, which we will now examine.

LEGAL STRUCTURES

The legal structure of both the music and fashion industries is contingent upon the notion of intellectual property, which Vaidhyathan refers to as “the murkiest and least understood aspect of American life and commerce.”⁴³ By this, he means that intellectual property laws are complex, difficult to police and enforce, always changing, and often out of step with the latest trends in technology and culture.

Despite their nebulous quality, one thing is clear and consistent about the collection of rights, privileges and practices commonly grouped together under the heading of intellectual property law: They all were founded on the premise that democratic society and creative cultures thrive on the free flow of ideas, and that remunerating people for sharing their ideas is the best way to keep them flowing. This notion can be found in the origins of traditional forms of intellectual property, such as copyrights, patents and trademarks, as well as newer alternative models such as GNU and creative commons licenses.

Copyrights give “authors” the exclusive power to control a “work” fixed in a tangible medium. The tangibility is important: Copyrights protect the expression of an idea, rather than the idea itself. In practice, this generally means a

Copyright changes historically have lagged

significantly behind technological innovations.

person or company possesses the rights to copy, perform or sell a book, song, software program or some other creative work. American copyright law is based on a constitutional mandate that Congress give creators an incentive to create, for the good of society. Consequently, copyrights always have had built-in limitations, such as a fixed expiration term and specified “fair use” exclusions for journalists, educators, critics and other contributors to the public sphere. However, such restrictions have been scaled down significantly over the years, as media and software companies have lobbied successfully Congress to push back expiration terms,⁴⁴ limit fair use in new legislation, and include a growing range of categories as “works” that can be protected under copyright.⁴⁵

Copyright traditionally has been the principal form of intellectual property law applied in the American music industry. This application has broadened considerably over the years. Printed material, such as scores, was covered first in 1790. Public performances were not covered until 1889. Mechanical reproduction, a right currently applied to songs on CDs, first was introduced in 1909 to cover piano rolls. In 1972, nearly a century after the invention of recorded sound, a new kind of copyright was developed to describe the performances (rather than the compositions) captured on records. Television broadcasts and jukebox playback first were added in 1976.⁴⁶ Today, all of these copyrights and more commonly are used in the music industry, creating a dense web of overlapping and interweaving protections that constantly is tested and renegotiated through legislation, litigation and contractual bickering.

As this brief overview demonstrates, copyright changes historically have lagged significantly behind technological innovations. As the pace of technological change continues to accelerate, it is becoming more difficult to apply existing copyright laws in a meaningful way. This is a problem we will address further in the next section of the paper.

In the fashion industry, copyright typically has been denied to apparel design, due to the idea that apparel consists of solely useful articles. Useful articles, under the Copyright Act of 1976, have only limited protection — there must be elements of a “pictorial, graphic, or sculptural work that may be identified separately and can exist independently of the utilitarian aspects of the article.” Little has changed since the act was passed, despite the 1977 claim by former Register of Copyrights Barbara Ringer that design protection was “one of the most significant and pressing items of unfinished business” of copyright revision.⁴⁸

Unlike in other industries, which are increasingly oligopolistic, the denial of copyright protection in fashion effectively has prevented monopolistic or oligopolistic control. Legislators and judges consistently have concluded that the public interest would be served best by denying copyright protection to designers, in effect promoting the free exchange of fashion ideas among a broad community of participants.

Like copyrights, patents were developed at the behest of Congress in order to spur creativity by granting a degree of control and remuneration to creators. Patents, known as the “law of invention,” generally apply to ideas or processes. Unlike copyrights, patents cover both an idea and its execution, and their terms are not extended to a functional infinity; currently patent terms last for 20 years. The three standards generally required to obtain a patent are usefulness, novelty and nonobviousness. As a consequence of these features, patents have found little use in the music industry outside of recording technologies and business practices.

Patents play a limited role in the fashion business, as well. Besides the three general patent standards, fashion law has added supplemental criteria. According to a historic court ruling on the subject, “the conception of the design must require some exceptional talent beyond the range of

the ordinary designer familiar with the prior art.”⁵⁰ In other words, innovation isn’t enough — invention ex nihilo is the bottom line.

Apparel designs consistently have failed to meet these requirements, for obvious reasons. However, there are other good reasons for the paucity of patents in fashion. It commonly is believed that even if patent law were modified to accommodate the unique needs of the fashion industry, the lengthy patent approval process would render its protection useless. Patent protection is most useful for articles and inventions that are used repeatedly and have a long shelf life. Fashion, with its abbreviated time spans and ephemeral nature, would have to rely on protection retroactively. The cycles of production and distribution, accelerated in the fashion industry, make litigation over IP infringement ineffectual and unwieldy. Thus, there has not been an aggressive push within the U.S. by apparel designers or manufacturers for more rigorous patent protection.⁵¹

Trademarks, which protect the commercial reputation or “goodwill” of a company or creator, play less of an immediate role in ensuring innovation and market diversity. Yet an argument can be made that it is easier for companies to market and sell a unique product with a unique brand attached to it. Trademarks, which are protected for infinitely renewable 10-year terms, generally are used within the music industry only to protect label names and unique artist names. However, they play a far more central role in the fashion industry.

According to current trademark law, marks or brands that are descriptive, such as a designer’s name, must gain a “secondary meaning” in order to qualify for registration. Thus, designers who intend to trademark their name, such as Calvin Klein or Donna Karan, must prove they’ve established a reputation in the marketplace — one in which their name has achieved a separate, qualitative significance. Obviously, a great deal of money must be spent to establish a brand that is distinct and recognizable, so it is no surprise that companies guard their trademarks aggressively.

Trademark law, while protecting designers from the unauthorized use of their registered marks (usually their labels), does not extend to the actual design of a garment itself. Thus, it is legal for a manufacturer to make an exact

reproduction of another company’s apparel design “without suffering any repercussions under trademark law.”⁵² To combat this standard, designers have sought protection under claims of unfair competition. If a designer can demonstrate the sale of a reproduction is likely to confuse the public, she may be afforded greater protection. This point is especially salient for design houses that consistently use their trademarks in their fabric patterns, such as Chanel, Gucci and Louis Vuitton, and therefore have a better chance of proving an unfair competition claim. However, the majority of fashion companies would not benefit from such litigation, given the seasonal and ephemeral nature of fashion, which makes pursuing such claims burdensome.

As technology has advanced in recent years — producing new creative products such as computer software and variations on older creative products such as recorded music and video — patents, trademarks and copyrights no longer represent a flexible and robust enough framework for control over intellectual property. The all-or-nothing approach embodied by traditional intellectual property law, which assumes a strict dichotomy between producers and consumers, lacks the capacity to cope with the vast and expanding gray area between the two roles.

Consequently, a variety of new models have been put forward to strike a better balance between the needs of creators, the public and the industries that connect them. For example, the GNU project was launched in 1984 in order to encourage information sharing and innovation among the software community.⁵³ Participating software developers use a “copyleft” instead of a copyright to designate their work. In the words of GNU founder, Richard Stallman, the idea of copyleft is:

[W]e give everyone permission to run the program, copy the program, modify the program, and distribute modified versions — but not permission to add restrictions of their own. Thus, the crucial freedoms that define “free software” are guaranteed to everyone who has a copy; they become inalienable rights.⁵⁴

Creative Commons, launched in 2001, aims to apply the same kinds of freedoms to a broader range of creative

works.⁵⁵ The organization offers creators the ability to assign four conditions to their works that offer more freedom than traditional copyright but more control than a work ceded to the public domain. An “attribution” condition allows others to copy, distribute or perform a work as long as the original creator is given credit. A “noncommercial” condition allows others to copy, distribute or perform a work for free. Under this condition, commercial users need to pay a negotiated fee. A “no derivative works” condition allows others to copy, distribute or perform a work, as long as it appears (or sounds) exactly like the original. Under this condition, derivative works like samples or collages can be produced only with the original creator’s permission. A “share alike” condition allows others to distribute their own derivative works only under a license identical to the one that governs the original work. Millions of works have been released under Creative Commons licenses to date, including works by thousands of musicians, including the Beastie Boys, the Talking Heads and Gilberto Gil.



ORGANIZATIONAL AND ECONOMIC STRUCTURES

Like its legal structure, the music industry’s organizational and economic structures are a somewhat hodgepodge result of historical changes in technology, power struggles and market forces. The industry can be seen as an ongoing response to a single challenge: How can music be channeled from performers to consumers in a profitable way? The financial component of this challenge traditionally has conflicted with, and generally trumped, the creative component. In other words, the music business has been most focused on maximizing revenues, rather than maximizing exposure for musicians, for example, or increasing access to music for consumers.

Despite the music industry’s emphasis on profit at the expense of musical community, musicians typically do not receive much of the money spent by consumers on their music. According to entertainment law attorney and author Chris Taylor,⁵⁶ the breakdown of revenue distribution from a typical CD sold at \$19.95 is as follows:

- Record label: \$6.17
- Retailer: \$5.95

- Manufacturing: \$1.00
- Distribution: \$4.39⁵⁷
- Producer(s): \$0.44
- Songwriter(s): \$0.69
- Artist: \$1.31

Thus, the creative progenitors of a record — the performing artists and composers — are entitled to only a combined 10 percent of the total money spent on their music by consumers.

While these numbers are an accurate average, they sadly overestimate the true revenue potential for most recording artists under the major label system. This is because a few artists sell extremely well, while most others sell extremely poorly. Of the 35,000 albums released in 2002 by the recording industry, fewer than 5,000 sold over 1,000 units.⁵⁸ According to the Recording Industry Association of America (RIAA) fewer than 10 percent of albums released ever recoup record label expenditures,⁵⁹ meaning that 90 percent of recording artists never see any royalty checks beyond their initial advances. Many recording artists are debited tens of thousands of dollars for each month their albums are completed after their contractual deadlines. Also, under certain circumstances, some major labels require their artists to repay recording costs if their projects are canceled.⁶⁰ Stacking the cards even further against musicians is the fact that many expenditures — from the producers’ royalties to promotional expenses to the cost of creating a music video — are deducted routinely from the artists’ royalties, rather than from the record labels’ piece of the pie.⁶¹

How can the power balance between musicians and the music industry be so one-sided? Don’t record labels need musicians at least as much as musicians need them? In a broad sense, the answer is yes. However, the balance of power is tipped by the vast number of musicians hoping to make a living through their music, and the relatively small number of firms providing opportunities for them to do so.

Every major conduit between musicians and music listeners in America currently is dominated by an oligopoly. The recording industry, radio, music television, concert venues and music retail each are controlled by a handful of

companies commanding the lion's share of audience and revenues. This trend only is accelerating with time. While six "major" record labels accounted for roughly 85 percent of American record sales a decade ago, today there are only four.⁶² Radio giant Clear Channel, taking advantage of a 1996 law that exponentially multiplied the maximum number of radio stations one company could run, currently owns approximately 1,200 stations throughout the United States, including stations in 89 of the top 100 markets.⁶³ General merchandiser Wal-Mart, which operates over 3,000 stores in the U.S., is responsible for selling approximately one-fifth of all CDs sold in this country each year.

The massive consolidation in the music industry is compounded by a degree of vertical integration. All of the major record labels are part of larger corporate organizations that own music publishers, CD manufacturing plants, electronics manufacturers, distribution companies and other vital elements of the music supply chain. In addition to its radio-station holdings, Clear Channel owns SFX, the largest chain of live event venues in the country. Viacom, another media conglomerate, owns Infinity Radio (with 185 stations) as well as MTV, VH1 and BET — creating a near monopoly on cable television music programming. With such entrenched economic and organizational structures commanding a firm grip on the means of production and distribution, it is easy to see why the needs of the music community come as a distant second to the needs of the industry.

The global fashion industry accounts for \$495 billion in the international trade of textiles and apparel.⁶⁴ Like the music industry, it has endured some consolidation as competitive pressures have forced manufacturers and retailers to seek economies of scale. This is especially true in the case of high-end, luxury manufacturers such as LVMH, Gucci and Richemonte, all of which have experienced rapid consolidation in the past decade. The fashion retail sector also has seen a great deal of recent merger and acquisition activity as companies aim to diversify their portfolios. As a result there are some unlikely pairings, such as the 2004 acquisition of high-end retailer Barneys by mass consumer brand Jones Apparel for \$400 million. Manufacturers also are starting to integrate vertically, citing better profit margins. Thus, apparel brands as diverse as Elie Tahari, Juicy

Couture and Oscar de la Renta have started to experiment with retailing.⁶⁵

However, in contrast to the music industry and despite these developments, the apparel industry still is fairly distributed and diverse, and remains horizontally structured, with the continued separate manufacture of textiles and the manufacture of clothing. There is no such thing as a "typical" fashion enterprise — the sector consists of a broad spectrum of companies in apparel, textile and accessories ranging from the high-end couture houses to mass-produced, low-priced commodity goods.⁶⁶

The supply chain in the fashion industry also is somewhat complicated, with multiple layers and organizational inefficiencies. In the transformation from design and product development to raw material to fabric to the apparel manufacturer to wholesale distributors and finally to retailers, there are multiple points for conflict and redundancy, often causing problems for manufacturers and retailers, such as the overstocking and understocking of items. As a result, the response to market needs traditionally has been somewhat slow.

There is not a single standard supply chain for the fashion industry. Manufacturing and distribution methods vary depending on the type of product. For example, haute couture designers such as Chanel or Yves Saint Laurent choose the fabric and design of their collections, which then are produced in relatively small quantities in their own workshops. Distribution also is limited and controlled, usually through the designer's own retail outlets or small, independent fashion boutiques.

In contrast, for more common mass brands, as well as the bridge lines⁶⁷ from designers, the design and manufacture processes are more industrial and prices tend to be much lower. Distribution takes place through high-end specialty chains and some department stores. Basic commodity apparel tends to be designed, produced and marketed for a mass audience through distributors such as general retail chains like Wal-Mart, lower-end department stores like JC Penney and specialty chains like the Gap.

In an effort to be more competitive and responsive to consumer desires, vertically integrated specialty chains, such as H&M and Zara, recently have emerged. The concept

— sometimes called "fast fashion" (an allusion to both the standardized supply chain and a degree of disposability akin to fast food) — was developed in Europe to boost consumption while hedging against uncertain consumer demand. The goal is to produce short-cycle fashion products as quickly as possible in relatively small quantities. The products are often trendy and typically aimed at teenagers and young women, although this demographic may change with the recent success of Karl Lagerfeld's collection for H&M.

The critical component of fast fashion is the ability to identify and track apparel trends quickly and marry this knowledge to the supply chain, producing new products in an abbreviated time frame. Zara's headquarters in Spain house its designers, factories and distribution center all in one space. Thus the company is able to respond to consumer demand immediately, turning over its inventory in a matter of weeks rather than months. As a result, the Zara shopper drops into the store an average of 17 times a year, resulting in added sales.⁶⁸ Digital technologies, just-in-time manufacturing techniques and vertical integration of the supply chain all are vital to the success of fast fashion.

In summary, despite the fundamental similarities between the creative communities at the heart of music and fashion, the two industries have evolved very differently, producing radically divergent legal, financial and organizational structures. Music has become a highly speculative industry, depending upon a fraction of its products to generate the vast majority of its revenues and all of its profit margin. Consequently, it has had to reduce risk through massive corporate consolidation, limited product diversity and a broadening array of intellectual property controls. In contrast, fashion, with a lower cost of doing business and a shorter lag time between conception and execution than music,⁶⁹ benefits from the diversity of products engendered by a decentralized industry. Additionally, the industry largely eschews the costly and cumbersome apparatus of intellectual property litigation in favor of a reputation-based system to ensure "fair play."⁷⁰

Yet many of the most ingrained aspects of the music and fashion industries exist as a result of the technological and economic realities that shaped them. As we have mentioned, one of the most-used copyrights in music still

is referred to as a "mechanical," although the mechanical piano, for which it was named, waned in popularity nearly a century ago. With continued technological and social advancement, will these industries have an opportunity, or even a mandate, to undergo fundamental structural changes? In order to answer this question, we must examine the ways in which forces like digital technology and globalization are influencing music and fashion today.

MUSIC IN THE DIGITAL AGE

Digital technologies have had a monumental impact on music culture and the music industry. Indeed, the advances made over the last 10 years are perhaps the most revolutionary of any since the advent of recorded sound more than a century ago. The primary change is the fact that, for the first time in history, music can be produced, distributed and consumed all on the same platform — the personal computer. Within the digital universe composed of PCs, the Internet, mobile phones, MP3 players, CD burners and other related technologies, music has become almost completely free and unfettered, a species of pure information that can be audited, edited and redistributed with the click of a button. This fact challenges nearly all of the assumptions previously held about music as a creative community, a commercial product or a system of institutions.

The digital music revolution has had a profound effect on the way music as an art form is conceived and created. All musical expression is composed of a unique sequence of fundamental sound elements, much as a sentence is a unique sequence of words. Typically, the sound elements define the limits of musical expression, while the sequence is the locus of innovation. For the last 400 years, nearly all music in Western society has been based on a set of elements called the tempered chromatic scale — the notes described by the keys on a piano. Until recent decades, every song in every style — from Bach's fugues to Miles Davis' extended improvisations — relied upon new reconfigurations of this now-ancient musical lexicon.

Today, the musical lexicon has broadened far beyond the limits of the piano keyboard to encompass the universe of recorded sound. Audio samples have augmented and replaced musical notes as the new building blocks for compo-

sition and improvisation, astoundingly expanding music's aesthetic horizons. To be sure, this advancement preceded digital technology by a few decades. Academic musicians like John Cage and Alvin Lucier, as well as pioneering dub reggae and hip-hop producers such as Lee "Scratch" Perry, DJ Kool Herc and Grandmaster Flash, used analog recording technology to paint sound pictures with samples. However, until the advent of digital music, these were fairly arcane practices, requiring a degree of interest and expertise beyond the scope of more traditional instruments.

Today the tools of audio sequencing and remixing are as accessible as the keys of a piano or the strings of a guitar. With minimal effort, any PC owner can use free and intuitive software to make new music entirely from pieces of other music and sound. This fact has changed the shape and practices of the creative community. As we argued earlier, there always has been a significant gray area between the opposing roles of producer and consumer. However, the limitations of pre-digital music technology reinforced this distinction, defining producers as those with the instruments and recording studios, and consumers as those with discs in their hands and electronic devices with which to listen to them. The digital age has brought about a collision of production and consumption technologies and the liberation of music from physical products. These developments have in turn enabled a consequent collision between the roles of producer and consumer, and the liberation of the musical community from the strictures of these roles.

We don't mean to suggest that digital technologies have returned us magically to a pre-feudal communitarian state in which everyone was a musician. Clearly this is not the case. On the whole, the changes have been more subtle. For many music fans, digital technology simply means greater access to a larger library of music, and more control over how to listen to it. However, the power of digital technologies enables "creative consumption," in which consumers apply aesthetic skill and discretion to such activities as constructing the perfect playlist or recommending music to other fans.

For many musicians, digital technology paves the way to improve the sound of their traditional instruments in the recording studio and to lower the cost of the recording

process. And for everyone involved in music, the bottom line is the same — digital technology allows more people to have more access to more music, and more power over it. In other words, it has created a vaster, exponentially richer music commons.

These changes also represent a challenge to the traditional ways in which the music industry has conducted business. When recorded music was attached to physical objects like CDs and cassettes, it possessed two qualities that economists refer to as rivalry (meaning only one person or group can use one resource at a time) and excludability (meaning that a person or group can be prevented from accessing a resource). According to standard economic theory, resources that are both rival and excludable fall under the category of "private goods," best treated as property and exploited through the market system. However, when music was decoupled from physical delivery mechanisms, it ceased to be either rival or excludable, recategorizing it as a "public good." Public goods notoriously are difficult to profit from via traditional market practices; rather, they tend to be managed by governmental or non-profit entities.⁷¹

It is easy to understand how the traditional music economy suddenly has been rendered obsolete. The best strategy the music industry can follow if it hopes to continue profiting from the distribution of music somehow is to tie its newly non-rival, non-excludable goods to other rival and excludable goods or services. This is no doubt the rationale behind the music industry's well-advised recent support for new distribution models like online music subscriptions and its increased enthusiasm for licensing popular songs to video games and other entertainment product categories.⁷²

The industry's loss of physical control over the distribution and use of music has had other significant effects as well. One major development is a renewed focus on intellectual property as a blunt but powerful instrument of legal control, which has become most visible — and possibly most absurd — in the prosecution of music consumers who share files over the Internet. At the time of this writing, nearly 7,000 individuals had been targeted by the RIAA for participating in peer-to-peer communities,⁷³ one of the

Audio samples have replaced musical notes as the new building blocks for composition and improvisation.

most prominent manifestations of the new digital music commons.

Ironically, as intellectual property has played an increasingly central role in the music industry's control apparatus, copyright law also has become increasingly difficult to apply to music. Remember that copyright only protects the expression of ideas, rather than the ideas themselves. As Vaidhyanathan argues, the digitization and networking of music undermines this central "idea/expression dichotomy,"⁷⁴ raising questions about what protections legitimately can be enforced.

There also has been an erosion of the concept of a copyrighted "work." Copyright originally was conceived as a way to protect entire compositions or scores. Even with the advent of the sound recording copyright in 1972, the law commonly was applied to complete songs or albums. With the rise of sampling as a compositional technique in recent decades, the American legal system has struggled to maintain a clear sense of where public goods end and distinctive property begins.

Two recent court decisions demonstrate the lack of resolution of these issues. In September 2004, a federal appeals court judge ruled that a song by N.W.A.,⁷⁵ which included an unlicensed two-second sample of Funkadelic's "Get Off Your Ass and Jam," violated the sound recording copyright. This ruling overturned a lower court decision that had argued the sample was so short it didn't constitute theft.⁷⁶ However, in November 2004, another federal appeals court judge addressing a different suit supported the argument that a six-second sample of a James Newton song by the Beastie Boys was "not sufficient to sustain a claim for infringement" of a composition copyright.⁷⁷

How can it be that the two-second sample violates copyright while the six-second sample does not? Theoretically, the distinction exists because one case is based on the sound recording copyright, while the other is based on the composition copyright. But does it make any sense for a fragment of a recording to constitute infringement, while a fragment of a composition does not? This inconsistency perfectly demonstrates the difficulty (perhaps the impossibility) of applying laws based on an analog universe to the new digital reality. As scholars such as Vaidhyanathan

and Lawrence Lessig have argued, this ambiguity actually may work to the benefit of the music industry and to the detriment of musical culture. The threat to traditional business practices provides a convenient rationale for corporations that thrive on intellectual property protections to push for ever tighter controls over the use of creative material — essentially shrinking the size and scope of the commons.

FASHION IN THE DIGITAL AGE

If digital technology defines the current era for music, globalization defines it for fashion. The growing web of communications networks bringing the world closer together radically has redefined the ways in which fashion designers interact, trends spread throughout the world and the fashion industry organizes itself.

The impact of digital technologies has been far less earth-shattering on the fashion industry than on the music industry, as digital advancements drastically have eroded the music's economic and organization structures. Digital technologies have made the distribution of fashion design images instantaneous, and broadened their reach. They also have helped accelerate the production and distribution cycles for lower-priced, trendy, commodity goods, as evidenced in the discussion of H&M and Zara. However, unlike music, which now is divorced from any physical product, apparel and accessories have not entered fully into the virtual realm (thankfully, we've heeded our childhood morality tales of emperors and their clothes). Certainly, some avant-garde designers and computer engineers are attempting to fuse apparel and consumer technology, but these experiments still are relegated to the margins, more at home in museums and universities than on the street.

Thus, while music has been transformed from a tangible product into a digital one, fashion remains a utilitarian, physical good. Technology may accelerate fashion's business processes, produce new ways of cutting patterns or develop a more breathable alternative to polyester, but it doesn't divorce the expression of the design from the design itself. Fashion is tactile and physical, necessarily rival and excludable, an indelible fact of its creation that separates it from music.

Technology also creates a living archive of design, ideas and styles in the microscopic chronicling of the fashion

industry by the media. It creates the opportunity for broader “sampling,” as seen in the rapid production of Academy Awards dress knockoffs, but it is also a valuable tool for the social regulation of “theft,” as described in the case of Nicolas Ghesquière at Balenciaga. As one journalist notes:

Designers have always looked to the past for inspiration; most famously, Christian Dior based his landmark New Look collection on memories of his mother, but in those days the past was not so minutely archived by the media and he could pass the belle époque off as his own.⁷⁸

The major change caused by digital technologies in fashion today is its globalization, which has drastically increased the already high tempo of the fashion world — accelerating production and consumption, and shortening the shelf life of trends. However, digital technologies also have a paradoxically inverse effect — sustaining the long-term shelf life of products and designs that may have disappeared much more quickly into fashion’s fickle ether. Also thanks to new technologies and communications networks, the traditional dichotomy between consumer and producer, already fragile in America since the 1960s, has deteriorated even further. Fashion consumers, like music fans, have become much more adept at creative consumption, mixing high and low to create new street trends. Fashion consumers today think nothing of combining a Chanel jacket with Levi’s jeans, Converse sneakers and a Hermès Birkin bag. Similarly, music fans increasingly are likely to combine several songs and albums into larger playlists, often played in “shuffle” mode,⁷⁹ creating a controlled chaos in which R&B, opera and Celtic jigs may rub shoulders, producing unexpected and often aesthetically gratifying results.

Clothing at one time served the exclusive purpose of shielding people from the elements — keeping us warm in colder climates, protecting us from the sun in tropical climates. With our current control over our physical environment — thanks to air-conditioning, indoor heating and commuting — our exposure to the elements is greatly reduced. As a result, traditional designs originally produced to protect their wearers, like those with socially denotative functions from other cultures, can be appropriated in new

reconfigurations, detached from their original meaning or intent. Globalization, with its ever expanding circulation of images, defines this practice. Suddenly, images of apparel, both traditional and new, high end and low, are available effortlessly and instantaneously. The fashion industry and community borrow freely from this global circulation of images, remixing and reconfiguring them in a persistent and expanding commons.

CONCLUSION

Music and fashion, two creative communities that share much in common, have evolved over time to produce drastically different industries. Both communities thrive on innovation and change, spurred by the mechanisms of reconfiguration, reinterpretation and reappropriation. Both are sustained by an ever growing commons, a living archive of all that has come before. Yet music suffers from a fundamental schism separating many of the needs of the creative community and consumers from the needs of the industry that enables and exploits it. Fashion, by contrast, has succeeded in brokering a working balance between aesthetic and financial mandates.

The causes for music’s malaise can be traced to the industry’s economic foundations and are compounded by the changes wrought through new digital technologies. An exceedingly high cost of doing business, low success rate and disproportionate balance between the cost of producing demand and supply all have conspired to make the industry risk-averse.⁸⁰ The industry currently operates through concentrated ownership structures, vertically integrated business organizations and fiercely protective attitudes toward intellectual property rights. In an age when new technologies have lowered the costs of production and distribution while decoupling musical expression from any physical media, the industry must re-evaluate its most deeply held practices and assumptions or face almost certain dissolution.

Fashion provides a tantalizing example of what the music industry could be under different circumstances. In the absence of thick copyright protection, the dividing line between influence and theft is maintained through a social apparatus of shame and an aesthetic tradition of transparency. Meanwhile, with historically lower barriers to entry, the

fashion industry has proven resistant thus far to corporate consolidation on the scale of the music industry.

Given its present imperative to reassess its core principles, what, if anything, can music learn from fashion? The answers have ramifications far beyond the scope of the music industry, if, as some suggest, music represents the proverbial canary in the coalmine for similar industries ranging from film to television to computer software.⁸¹

During the 1990s, many hoped the efficiencies of digital distribution would provide an opportunity for new and innovative companies to pose a significant challenge to the established record labels. However, these dreams were dashed by the growing expense of marketing and promotion in the face of new communications channels and the resolute inflexibility of a music industry wary of change. In the subsequent years, the only large-scale solution the music industry has sought for its social, economic and organization problems has been the increasingly stringent interpretation and enforcement of intellectual property rights.

Clearly, this policy cannot continue without dire consequences. At some point, the aggressive controls the music industry seeks over the behaviors of both musicians and listeners will stifle aesthetic innovation (or force it entirely underground), and alienate its own consumer base. In order to avert such a catastrophic turn of events, the music industry would do well to heed some of the fashion industry’s basic creative, organizational and legal tenets.

To be sure, the music industry already has made some intelligent moves in this direction. Labels and publishers recently have increased their efforts to license recorded music to movies, television, video

games and other secondary media channels, effectively shifting a larger portion of their revenues from a business-to-consumer model to a more reliable business-to-business model. Additionally, after years of institutional resistance to new consumer-oriented business models, the major labels recently have exhibited enthusiasm for digital music services, following the unexpected consumer success of Apple’s iTunes Music Store. While it is a move in the right direction, this was a reactive, rather than a proactive change. A major structural reorganization and consumer education marketing campaign would have to be undertaken before digital music subscriptions and other service-based alternatives to traditional music products can achieve dominance in this industry.

Unfortunately, the music industry is unlikely to undergo such major structural change until it is forced. Vested interests tend to entrench themselves even as the ground they stand on turns to quicksand. A more likely future for the music industry is increasing antagonism between sellers and buyers, and increasing homogeneity in the music market, until the entire system breaks under the strain. If and when this finally comes to pass, the musical community may have an unprecedented opportunity to start over from scratch, building a new industry on the ashes of the old. Fashion provides a promising, if imperfect, blueprint for the job. ♦

In order to avert a catastrophic turn of events, the music industry would do well to heed some of the fashion industry’s basic creative, organizational and legal tenets.

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ENDNOTES

¹ Much of the information on DJ Z-Trip's relationship with Hollywood Records was relayed personally by current *Billboard* journalist Bill Werde, who at the time of publication was in the process of reporting and writing about the story for *Rolling Stone*.

² Mash-up artist Osymyso, for instance, has produced a popular track called "Intro-inspection" that incorporates samples from 101 separate songs.

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⁵ WM Ferguson, "The Mainstream Mash-Up," *New York Times*, Dec. 12, 2004.

⁶ Bill Werde. Personal email communication, December 2004.

⁷ Werde, "DJ Z-Trip: Switching Gears," review of *Shifting Gears* album by DJ Z-Trip, *RollingStone.com*, April 21, 2005. [www.rollingstone.com/reviews/album/_id/7237718/djztrip]

⁸ Siva Vaidhyanathan, *Copyrights and Copywrongs* (New York: New York University Press, 2001). According to the author, "thick" copyright law prizes protection over accessibility with features such as long durations, stringent prohibitions and harsh penalties. "Thin" law, by contrast, takes the opposite tack, emphasizing accessibility over protection.

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▲ Brilliant color and draping from an earlier era translate into modern elegance.

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²⁴ For a thorough and hilarious review of reactionary screeds in the world of European classical music, see Nicolas Slonimsky, *Lexicon of Musical Invective*, 2nd ed. (New York: Coleman-Ross, 1965).

²⁵ CD liner notes for Tuvan vocal group Huun-Huur-Tu. [www.huunhuurtu.com/CDliners.html]

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³⁰ Vincent B. Leitch, "Costly Compensations: Postmodern Fashion, Politics, Identity," *Modern Fiction Studies*, Spring 1996, 111.

³¹ Saskia Sassen, *The Global City* (Princeton: Princeton University Press, 2001).

³² Richard Wheeler. Personal telephone communication. October 2004.

³³ Attali, 15.

³⁴ Eileen Southern, *The Music of Black Americans*, 2nd ed. (New York: Norton, 1983), 7.

³⁵ Attali, 15.

³⁶ Attali, 52.

³⁷ Vaidhyanathan, 12.

³⁸ Kim Cascone, "Laptop Music — Counterfeiting Aura in the Age of Infinite Reproduction," 107 *Parachute*, 2002, 52-59; "Cost of a CD." RIAA Web site, 2003. Retrieved online Nov. 15, 2004. [www.riaa.com/news/marketingdata/cost.asp]

³⁹ Attali.

⁴⁰ Crane, 4.

⁴¹ Crane, 5.

⁴² There are some exceptions: The more extreme haute couture, experimental fashion and wearable technology could be argued to serve no functional requirement and make

the claim of "art for art's sake."

⁴³ Vaidhyanathan.

⁴⁴ Originally, copyrights were granted for 14-year terms, with the potential for a single 14-year renewal. Currently, copyrights are granted for the life of the author plus 70 years — a potential term of 150 years or more.

⁴⁵ James Boyle, "The Second Enclosure Movement and the Construction of the Public Domain," 66(1) *Law and Contemporary Problems*, 2003, 33-74; Lessig; Vaidhyanathan.

⁴⁶ M. William Krasilovsky and Sidney Shemel, *This Business of Music*, 7th ed. (New York: Billboard Books, 1995).

⁴⁷ Jennifer Mencken, "A Design for the Copyright of Fashion," posted to the Intellectual Property and Technology Forum at Boston College Law School Web site, Dec. 12, 1997. Retrieved online Nov. 19, 2004. [www.bc.edu/bc_org/avp/law/st_org/iptf/articles/content/1997121201.html]

⁴⁸ Barbara Ringer, "The Unfinished Business of Copyright Revision," 24 *UCLA Law Review*, 1977, 951-976.

⁴⁹ This is the result of a single extension in 1995, from an original term of 17 years.

⁵⁰ Gold Seal Importers v. Morris White Fashions, Inc., 124 F.2d 141, 142 (2d Cir. 1941).

⁵¹ There have been some notable exceptions engendered by technological development. Thus, certain components of garments, such as zippers and Velcro closures, have been awarded patents, but these components are considered enabling technologies with uses beyond fashion, rather than the product of fashion's creative community.

⁵² Mencken.

⁵³ GNU Project Web site. [www.gnu.org]

⁵⁴ Richard Stallman, "The GNU Operating System and the Free Software Movement," from *Open Sources: Voices From the Open Source Revolution*, eds. Chris DiBona, Sam Ockman and Mark Stone (Sebastopol, CA: O'Reilly, 1999), 59.

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⁵⁶ Chris Taylor, "Where The Money Goes: A Breakdown of the \$19.95," published on Sanderson Taylor Web site, undated.

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⁵⁷ Manufacturing and distribution companies often are owned by the same corporate parent as the record label.

⁵⁸ Peter Spellman, "The Future of Music Careers: Quantum Career Development in an [sic] Transforming Industry," published on Future of Music Coalition Web site, March 2003. Retrieved online Nov. 15, 2004. [www.futureofmusic.org/articles/spellmanmusicianbiz.cfm]

⁵⁹ RIAA, 2003.

⁶⁰ Personal email communication with music industry attorney Jonathan Zavin, December 2004.

⁶¹ Andrea Goode Barber, "Analysis of a Recording Contract," published on StarPolish Artist Advice Web site, undated. Retrieved online Nov. 15, 2004. [www.starpolish.com/advice/article.asp?id=113]

⁶² Today's four major labels are Universal, EMI, Warner and Sony BMG. Universal acquired a fifth major label, Polygram, in 1998. Sony BMG is a joint venture between two previously separate major labels.

⁶³ "Clear Channel Radio Fact Sheet," published on Clear Channel Web site, undated. Retrieved online Nov. 15, 2004. [www.clearchannel.com/fact_sheets/radio_factsheet.pdf]

⁶⁴ Elizabeth Becker, "Textile Quotas to End Soon, Punishing Carolina Mill Towns," *New York Times*, Nov. 2, 2004. The fashion industry's decentralized structure, diverse product range and idiosyncratic practices make it far more difficult to detail financially than the music industry. Consequently, this figure conflicts with some other published estimates. This also has prevented us from providing a detailed breakdown of fashion revenue distribution akin to our music industry analysis.

⁶⁵ "Berns Communications Group Unveils 2005 Retail Strategies Noted by Leading

Industry Experts," Berns Communications Group press release, published on *Business Wire*, Dec. 6, 2004.

⁶⁶ Peter Doeringer and Sarah Crean, *Can Fast Fashion Save the US Apparel Industry?*, unpublished manuscript, 2004. This section is highly indebted to the authors for their thorough explanation and analysis of "fast fashion."

⁶⁷ Bridge lines are the lower-priced, higher sales-volume (and generally more profitable) lines by higher-end designers. Some examples of popular bridge lines include Ralph Lauren's Polo, Donna Karan's DKNY and Calvin Klein's CK.

⁶⁸ "Store Wars: Fast Fashion," report related to three-part special featured on the BBC2 television series *Money Programme*, published on *Money Programme* Web site, Feb. 18, 2003. Retrieved online Nov. 20, 2004. [http://news.bbc.co.uk/2/hi/business/3086669.stm]

⁶⁹ The music industry's longer lag time compared to fashion is due to its disproportionate investment in the production of demand (i.e., marketing and promotion) and its lack of seasonal and cyclical deadlines, rather than any complexity regarding production or design processes.

⁷⁰ We do not mean to suggest this system is without its flaws. Like any of system of regulation, it can suffer from an asymmetrical balance of power, and in many cases lesser-known, independent designers are not afforded the same privileges as established designers.

⁷¹ Paul M. Johnson, *A Glossary of Political Economy Terms*, published on Auburn University Web site, 1994-2005. Retrieved online Nov. 15, 2004. [www.auburn.edu/~johnspm/gloss]

⁷² Aram Sinnreich, "File Sharing: To Preserve Music Market Value, Look Beyond Easy Scapegoats," (New York: Jupiter Research, 2002).

⁷³ David McGuire, "D.C. College Students Targeted in Piracy Suit," *WashingtonPost.com*, Nov. 18, 2004. [www.washingtonpost.com/wp-dyn/articles/A60606-2004Nov18.html]

⁷⁴ Vaidhyanathan.

⁷⁵ The song initially was released in 1990. This considerable legal lag time further demonstrates the inadequacy of the legal system to cope with accelerating technological and aesthetic changes.

⁷⁶ Susan Butler, "Court Ruling Could Chill Sample Use," *Billboard*, Sept. 18, 2004. Available on *MSNBC.com*. [www.msnbc.msn.com/id/5964507]

⁷⁷ "Beastie Boys Win Court Ruling," *Los Angeles Times*, Nov. 10, 2004.

⁷⁸ Charlie Porter, "Darling, You Look So 1973," *The Guardian* (London Edition), April 10, 2004.

⁷⁹ This trend has become so mainstream that Apple recently released the iPod shuffle, a portable music player tailored to this behavior.

⁸⁰ This description characterizes the music industry as embodied by the major labels and their chief distribution channels. It is important to note that an entirely different calculus may be applied to truly independent record labels and musicians, who often achieve economic sustainability on a far smaller scale and are consequently far more willing and able to take aesthetic and legal risks.

⁸¹ Historically, the low file size and high consumption rate of songs have interacted with the Internet's limited bandwidth so that cutting-edge music applications (such as peer-to-peer file sharing) have predated similar applications for larger, less wieldy media.



THE

EVENT



Norman Lear playfully takes a turn on the catwalk at the "Ready to Share" conference.

OVERVIEW

On January 29, 2005, the Norman Lear Center held a landmark event on fashion and the ownership of creativity. "Ready to Share: Fashion & the Ownership of Creativity" explored the fashion industry's enthusiastic embrace of sampling, appropriation and borrowed inspiration, core components of every creative process. Presented by the Lear Center's Creativity, Commerce & Culture project, funded in part by a generous gift from the Center for the Public Domain and sponsored by The Fashion Institute of Design & Merchandising/FIDM, this groundbreaking conference featured provocative trend forecasts, sleek fashion shows and an eclectic mix of experts from fashion, music, TV and film. Discussion sessions covered fashion and creativity, intellectual property law, fashion and entertainment and the future of sharing.

DVD

Highlights from the event are featured in the DVD included in this book. The DVD contains event footage and commentary from leaders in fashion, entertainment and academia, including John Seely Brown, Danger Mouse, Tom Ford, Michael Patrick King, Norman Lear, David Wolfe and more.
Host: Rick Karr.

MORE INFORMATION

Video, photos and transcripts from the "Ready to Share" event, as well as full project details, are available at: www.readytoshare.org.

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Creator of the *Grey Album*

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Fashion Critic,
Los Angeles Times

RICHARD NICHOLS

Producer of *The Roots*

SAM PHILLIPS

Grammy-nominated singer and songwriter

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PROGRAM

Welcome

Martin Kaplan

Keynote — Ready to Share, Ready to Wear, Ready or Not!

Introduction: Martin Kaplan,
David Bollier
Keynote: David Wolfe

The fashion world is predicated on creating “originals.” And yet, virtually all of the mega-millions generated by the industry are the result of a ripple-out effect, which is acknowledged and even encouraged, sometimes formally and legalized, sometimes not. How did this creative model begin? How does it work today? An insider’s view into a fragile ecosystem that balances creative and commercial interests, presented by David Wolfe, the most quoted authority in the world of fashion.

Session I — The Ecology of Creativity in Fashion

Introduction: Norman Lear
Moderator: Laurie Racine
Participants: Tom Ford, Guy Trebay

While fashion is surely about individual talent and inspiration, it is also a collaborative enterprise that takes place within fashion houses, among designers and across generations. Designer Tom Ford and cultural commentator Guy Trebay engage in a conversation about the distinctive role of homage, open appropriation and creative transformation in fashion.

Session II — Handing Down the Song: Music, Ownership & the Creative Process

Moderator: Jonathan Taplin
Participants: T Bone Burnett, Danger Mouse, Richard Nichols, Sam Phillips, Rani Singh

This session asks leaders in the music industry to explain how creative traditions are shared and sustained in an industry that’s trying to lock down ownership of creative content. Panelists discuss how musical innovation circulates and comment on the conflicting attitudes toward sampling, ownership of creative work and new models of compensation for creators.

Presentation — Fashioning the Future From the Past

Introduction: Barbara Bundy
Participants: Kevan Hall, Kevin Jones, L.A. Models

The glorious glamour of Kevan Hall’s Spring 2005 collection harkens to the 1930s, 1940s and early 1950s, and recalls looks favored by his muse, Millicent Rogers, fashion icon and Standard Oil heiress, as well as the hand-tinted palette of Cecil Beaton, famed British portrait photographer. In a live fashion show, Hall’s celebrated creations are joined on stage by period garments that inspired them, culled from the FIDM Museum collection. Curator Kevin Jones and the designer focus on how historical research inspires new style directions.

Session III — The Business of Creativity

Moderator: Martin Kaplan
Participants: Cate Adair, Ted Cohen, Michael Patrick King, Norman Lear, Booth Moore, Sheryl Lee Ralph

Known for succeeding by breaking the rules, Norman Lear and Michael Patrick King discuss creative risk-taking in the entertainment industry and King’s use of fashion in *Sex and the City*. Following this conversation, a panel of four veterans of the entertainment and fashion industries respond, addressing practical obstacles and opportunities for implementing innovative visions in fashion, film, music and television.

Presentation — Chanel or Fauxnel? The Chanel Jacket ... Unraveled

Introduction: Barbara Bundy
Participants: Cameron Silver, Norman Lear, L.A. Models

Vintage expert Cameron Silver takes us on a guided tour through the hall-of-mirrors history of a fashion icon: the Chanel jacket. Reflected in just about every fashion season since its inception, the Chanel jacket long ago crossed the line from couture into ready-to-wear and has become a staple of many well-respected collections as well as discount knockoff lines.

With models in original Chanel and knockoff interpretations, Silver reviews the history of the design, its unique place in the fashion lexicon and Chanel’s perspective on what it perceives as the abuse of the brand.

Session IV — The Future of Sharing: Content and Creativity in the Digital Age

Moderator: Rick Karr
Participants: John Seely Brown, Ted Cohen, Jonathan Taplin, Siva Vaidhyathan, David Wolfe

Fashion has built a rich tradition around the appropriation and sharing of creativity, a dynamic that has enabled it to evolve constantly and rapidly while remaining globally competitive. A great many new digital media appear to incorporate this perspective by facilitating and celebrating the creative reuse of existing works. In this concluding panel, leaders in academia, industry and the arts discuss the implications of emulating the fashion model — exploring how and why other industries and innovators might adopt or reject fashion’s *modus operandi* — and speculate on the future of different creative sectors and how ownership and compensation models may change.

Presentation — Out on Top: The T-shirt, From Fashion Essential to Revolutionary Icon

Introduction: Barbara Bundy
Participant: Rose Apodaca

It might still serve us as a comfortable basic, but the T-shirt’s storied evolution as a statement and staple of emancipation, creativity, commerce and fashion makes it the single most important article of clothing in our collective closets. T-shirts serve as banners of rebellion and uniforms of inclusiveness. They have been interpreted, altered and morphed in more ways than anyone can count — and they continue to be reinvented in ways that can comment on, complement and even shape the culture.

Closing

Martin Kaplan, David Bollier



HIGHLIGHTS AND PHOTOS



1. Lear Center Senior Fellow Laurie Racine

2. Actress Sheryl Lee Ralph and *Desperate Housewives* costume designer Cate Adair

3. Designer Tom Ford and *New York Times* fashion reporter Guy Trebay

4. Tom Ford

5. Lear Center Director Martin Kaplan and Senior Fellow David Bollier

6. The Roots producer Richard Nichols

7. Keynote speaker and trend guru David Wolfe

8. Journalist Rick Karr

9. EMI Music's Ted Cohen and *Los Angeles Times* Fashion Critic Booth Moore

10. FIDM VP of Education Barbara Bundy

11. Media technology scholars John Seely Brown and Siva Vaidhyanathan with David Wolfe

12. Vintage clothier Cameron Silver

13. Norman Lear

As part of his keynote — “Ready to Share, Ready to Wear, Ready or Not!” — America’s foremost fashion trend forecaster David Wolfe announced the demise of youth-oriented celebrity culture and the rise of “deluxe minimalism,” which he predicted will appeal to well-to-do baby boomers.

During an investigation of “The Ecology of Creativity,” designer Tom Ford said he was flattered by knockoffs of his work — although Gucci, where he served as creative director, was not so pleased — as he discussed his creative process and his own practice of homage. Timely predictions came from *The New York Times*’ Guy Trebay, who anticipates a rise in limited editions from the premiere fashion houses that are struggling against piracy.

Discussing “Handing Down the Song: Music, Ownership & the Creative Process,” archivist Rani Singh provided background on the free-form sharing of folk music, as renowned producer T Bone Burnett railed against the outdated practices of the music industry. The Roots producer Richard Nichols maintained that sampling is here to stay while mash-ups may be a passing trend. In an ironic twist, Danger Mouse, the creative force behind the illegal mash-up of Jay-Z’s *Black Album* and The Beatles’ *White Album*, admitted his initial anxiety about the release of the *Grey Video*, an illegal mash-up of Jay-Z footage and Beatles footage, set to Danger Mouse’s mix. Impressed by the *Grey Album*, Grammy-nominated singer-songwriter Sam Phillips asked Danger Mouse to “please mash me!”

In “Fashioning the Future From the Past,” FIDM Museum Curator Kevin Jones led famed Los Angeles designer Kevan Hall in a live fashion showcase of his glamorous Spring 2005 collection, accented on stage by period garments that inspired him, which were culled from the FIDM Museum archives.

Television innovator Norman Lear discussed some of the riskier creative choices he made in his legendary career, such as allowing Archie Bunker to sing “God Bless America” without legal clearance, and writer-producer Michael Patrick King explained how fashion — and Manolo Blahnik shoes, in particular — became a leading character in *Sex and the City*. The two continued their conversation on “The Business of Creativity,” joined by *Desperate Housewives* costume designer

Cate Adair, EMI Music’s Ted Cohen, *Los Angeles Times* Fashion Critic Booth Moore, and Tony-winning actress and director Sheryl Lee Ralph; the group shared a revealing talk on the fashion-entertainment nexus.

Vintage clothier Cameron Silver, named one of *TIME* magazine’s “25 Most Influential Names and Faces in Fashion,” produced a unique live fashion show presentation on the evolution of the Chanel jacket and its many imitators. In “Chanel or Fauxnel? A Legendary Jacket ... Unraveled,” Silver ultimately challenged the audience — and notably, host Norman Lear, who took a turn on the catwalk — to differentiate the knockoffs from the originals.

In “The Future of Sharing: Content and Creativity in the Digital Age,” former Xerox PARC director John Seely Brown considered the correspondence between creativity in fashion and digital entertainment, and the dissonance between new creative technologies and historic copyright norms. USC Annenberg professor Jonathan Taplin argued for the establishment of reasonable “mechanical” licenses to pay for the use or sampling of pre-existent creative works, and David Wolfe noted the impact of technology on fashion’s already fast-paced world. In the digital environment, the only thing worse than being sampled, concluded NYU’s Siva Vaidhyanathan, paraphrasing Oscar Wilde, “is not being sampled.”

Women’s Wear Daily’s West Coast Bureau Chief Rose Apodaca toured the evolution of the tee from woolly undergarment to couture fashion statement. In “Out on Top: The T-shirt, From Fashion Essential to Revolutionary Icon,” Apodaca spotlighted the ubiquity of cotton T-shirts and their incredible markup, particularly for vintage rock tees, noting that she had to plunk down a \$15,000 deposit for the assortment of vintage T-shirts she showcased during the segment, some of which can be found “at the Salvation Army.”

Following the event, guests attended a grand reception celebrating the opening of the 13th annual Art of Motion Picture Costume Design Exhibition at FIDM, featuring costumes from the 2005 Academy Award-nominated films for Best Costume Design.



Tom Ford



Tom Ford, seated at the Ready to Share event.

PARTICIPANT BIOGRAPHIES

CATE ADAIR

Catherine Adair was born in England, spent her primary education in Switzerland, and then returned to the U.K. where she earned her degree in set and costume design from the University of Nottingham. After a series of apprenticeships in the London theater, Adair immigrated to the United States where she initially worked as a costume designer in East Coast theater productions. Her credits there include The Kennedy Center, Washington Ballet, Onley Theater Company, The Studio and Wolf Trap. Adair moved to Los Angeles, joined the West Coast Costume Designers Guild and started her film and television career. Her credits include *The 70s* mini-series for NBC; *The District* for CBS; the teen film *I Know What You Did Last Summer* and Dreamworks' *Win a Date with Tad Hamilton*. Currently Adair is the costume designer for the ABC hit series *Desperate Housewives*.



Cate Adair

ROSE APODACA

The West Coast Bureau Chief for *Women's Wear Daily (WWD)* and a contributor to *W*, Rose Apodaca covers the fashion and beauty industries, and reports on Hollywood and the culture at large. Apodaca has been instrumental in the many events and projects tied to *WWD* and the fashion business in Los Angeles, including the establishment of LA Fashion Week, and is active in the Hollywood nightlife revival as a partner in Vine, Beauty Bar and Star Shoes. Before joining Fairchild Publications in June 2000, Apodaca covered fashion and popular and counter culture for over a decade for the *Los Angeles Times*, *USA Today*, *Sportswear International*, *Detour*, *Paper* and others. As Fashion Editor at *ASR (Action Sports Retailer)*, she developed the annual Top 10 list, naming the most innovative brands in the action sports market. The Southern California lifer has created and taught college courses on street style. A lowbrow and contemporary art fan, she serves as an advisory board member at the Grand Central Art Center in Santa Ana.



Rose Apodaca

DAVID BOLLIER

David Bollier is a senior fellow at the Norman Lear Center and co-founder of Public Knowledge, an advocacy group dedicated to defending the commons of the Internet, science and culture. Since 1984, he has been a collaborator with television and film producer Norman Lear on a wide variety of projects. Bollier also works as an independent strategist and journalist specializing in issues of progressive public policy, digital media and democratic culture. Bollier's recent work has focused on developing a new vocabulary for reclaiming "the commons." The commons refers to the diverse array of publicly owned assets, gift-economies and natural systems that are available to everyone as a civic or human right. Bollier's critique of the commons is set forth in his 2002 book, *Silent Theft: The Private Plunder of Our Common Wealth* (Routledge), and in a number of essays and reports. He has developed the notion of the information commons as a new paradigm for understanding the public interest in the digital, networked environment. His latest book related to the subject is *Brand Name Bullies: The Quest to Own and Control Culture* (Wiley, 2004). Educated at Amherst College (B.A.) and Yale Law School (M.S.L.), Bollier lives in Amherst, Massachusetts.



David Bollier



Barbara Bundy

BARBARA BUNDY

Barbara Bundy is Vice President of Education of The Fashion Institute of Design & Merchandising/FIDM. She is responsible for the administration of all educational programs, the Resource and Research Center, Career Development Center and all student-servicing departments on the college's four campuses — Los Angeles, San Francisco, Orange County and San Diego. She also serves on the four-member Board of Administration that oversees all college activities; is a member of the FIDM Scholarship Foundation Board; and is a Board Member of the FIDM Museum Foundation, which houses a collection of over 10,000 costumes, accessories and rare textiles. Additionally, Bundy developed and co-chairs an Advanced Study Program in International Manufacturing and Product Development, which prepares students to enter the global community of manufacturing and product development. She has been a speaker for the college and the fashion and apparel industry at international events in Mexico, Russia, Italy, France, Japan, Hong Kong and Korea. Bundy joined FIDM in 1978 as Executive Director of Education, following a career in retail buying and management. She began her career at Bullock's Wilshire and Robinson's Department stores, now a division of May Department stores. Bundy is active in numerous professional and civic organizations. She serves on the Boards of Directors of the Junior League of Los Angeles, Costume Council of LACMA (Los Angeles County Museum of Art) and Junior Philharmonic Committee. She was a member of the Advisory Board for the Los Angeles Unified School District's Fashion Magnate High School and she served on the Mayor's Fashion Promotion Advisory Committee under Mayor Bradley. A fourth-generation Californian, Bundy attended UCLA and received her degree in business administration from Mount St. Mary's College.

JOHN SEELY BROWN

John Seely Brown is a visiting scholar at University of Southern California and previously was the Chief Scientist of Xerox Corporation and the director of its Palo Alto Research Center (PARC) — a position he held for nearly two decades. While head of PARC, Brown expanded the role of corporate research to include such topics as organizational learning, complex adaptive systems, ethnographic studies of the workscape, and MEMS and NANO technologies. He was a co-founder of the Institute for Research on Learning (IRL). His personal research interests include the management of radical innovation, digital culture, ubiquitous computing and organizational and individual learning. Brown — or, as he is often called, JSB — is a member of the National Academy of Education and a Fellow of the American Association for Artificial Intelligence and of AAAS, and a Trustee of Brown University and the MacArthur Foundation. He serves on numerous public boards of directors (Amazon, Corning, Polycorn, Varian Medical Systems) and on various private boards. He has published over 100 papers in scientific journals and was awarded the *Harvard Business Review's* 1991 McKinsey Award for his article, "Research That Reinvents the Corporation," and again in 2002 for his article, "Your Next IT Strategy." In 1997, he published the book *Seeing Differently: Insights on Innovation*. He was an executive producer for the film *Art • Lunch • Internet • Dinner*, which won a bronze medal at Worldfest 1994, the Charleston International Film Festival. With Paul Duguid, he co-authored the acclaimed book *The Social Life of Information* (HBS Press, 2000) that has been translated into nine languages, with a second edition in April 2002. And with John Hagel, he has written *The Only Sustainable Edge: Why Business Strategy Depends on Productive Friction and Dynamic Specialization* (HBS Press, 2005). JSB received a B.A. from Brown University in 1962 in mathematics and physics and a Ph.D. from University of Michigan in 1970 in computer and communication sciences.

T BONE BURNETT

Born Joseph Henry Burnett in St. Louis, Missouri, T Bone Burnett grew up in Fort Worth, Texas, where he first made records in 1965, producing Texas Blues, country, and rock and roll bands. In the early-1970s, he relocated to Los Angeles, where he still lives and works as a producer and recording artist. In 1975, he toured with Bob Dylan's Rolling Thunder Review before forming his own group, the Alpha Band, with others from the tour. Burnett returned to recording solo in the late-1970s and has gone on to record numerous critically acclaimed albums under his own name. In the last five years, he has written music for two Sam Shepard plays — *Tooth of Crime (Second Dance)* and *The Late Henry Moss* — and composed music for a production of Bertolt Brecht's *Mother Courage and Her Children* by Chicago's Steppenwolf Theatre Company. In 2000 Burnett produced the soundtrack for *O Brother, Where Art Thou?* The album sold multimillions and won multiple Grammys, including Album of the Year and Producer of the Year for Burnett. With Academy Award-winning filmmakers Joel and Ethan Coen, he formed DMZ Records, a joint venture with Columbia Records, and produced the label's inaugural releases: a new album by the legendary bluegrass musician Ralph Stanley and the *Divine Secrets of the Ya-Ya Sisterhood* soundtrack. He was nominated for an Academy Award in 2004 as co-writer, along with Elvis Costello, of "The Scarlet Tide" from the Civil War epic film *Cold Mountain*. Burnett served as Executive Music Producer

for the film and produced its soundtrack album. The *Cold Mountain* soundtrack, released on DMZ Records, earned Burnett and composer Gabriel Yared a British Academy of Film and Television Arts (BAFTA) award for achievement in film music in February 2004. The *Cold Mountain* soundtrack also spawned a second Academy Award-nominated song, "You Will Be My Ain True Love," which was written by Sting and produced by Burnett. The *Cold Mountain* soundtrack garnered six Grammy nominations, including Best Compilation Soundtrack and Best Song Written For A Motion Picture, Television Or Other Visual Media for "The Scarlet Tide." Burnett also was nominated for Producer of the Year. A prolific and versatile producer, Burnett has produced highly successful recordings for Sam Phillips, Elvis Costello, Roy Orbison, Counting Crows, The Wallflowers, Tony Bennett, k.d. lang and Gillian Welch, among others. He most recently produced the soundtrack to the Coen Brothers' film *The Ladykillers*, as well as the critically acclaimed debut from one of music's new buzz bands, Autolux.

TED COHEN

Senior Vice President of Digital Development & Distribution for EMI Music Ted Cohen oversees worldwide digital business development for this "big five" record company, which includes the Capitol, Virgin, Angel/Blue Note, Parlophone and Chrysalis labels. Under Cohen's guidance, EMI has led the industry with its initiatives in new technologies and new business models. In addition to seeking out, evaluating and executing business opportunities for the company, Cohen serves as a strategist and key decision-maker for EMI's global new media and anti-piracy efforts. He has worked to establish company-wide digital policies, which have provided EMI's artists and labels a substantial advantage in the digital music arena. Cohen co-founded and served as chairman of the groundbreaking Webnoize conferences. He currently chairs MidemNet, an international music-technology conference convened in Cannes each year. Cohen also serves on the Board of Directors for the Neil Bogart Memorial Fund, co-chairs the new media arm of the T.J. Martell Foundation and lends his time to the Grammy In The Schools program.

DANGER MOUSE

In 2004, artist-producer Danger Mouse was named a *GQ* Man of the Year; called "Eccentric Genius of the Year" by *SPIN*; hailed as "The Hottest Hip-Hop Producer in the World" by *NME*; honored with Album of the Year by *Entertainment Weekly*; and added to *Q Magazine's* list of the "Industry's 100 Most Influential People." Danger Mouse, AKA Brian Burton, gained his instant notoriety after producing the *Grey Album*, a unique hybrid of The Beatles' *White Album* and Jay-Z's *Black Album*. The infamous album forever raised the bar on hip-hop experimentalism and was dubbed a "bootleg masterpiece" by *GQ*. With one million downloads in just one week and an ensuing battle between major record companies, the Internet and copyright advocates, the release of the *Grey Album* is considered a watershed moment in music history. Following his critically acclaimed 2004 debut CD with Jemini — *Ghetto Pop Life*, featuring The Pharcyde, Tha Alkaholiks and Cee-Lo — Danger Mouse produced the 2005 Gorillaz album, *Demon Days*, on Virgin Records.

TOM FORD

Tom Ford was born in Austin, Texas, but spent most of his childhood in Santa Fe, New Mexico. During his teens, Ford moved to New York and enrolled at New York University, initially attending courses in art history. He later redirected his studies to concentrate on architecture at Parsons School of Design in New York and Paris, concluding his training at Parsons in New York. In 1990, Ford moved to Milan to join Gucci as the company's Women's Wear Designer. He became Design Director in 1992, and, in 1994, he was appointed Creative Director of Gucci. He was responsible for the design of all product lines, from clothing to perfumes, and for the company's corporate image, advertising campaigns and store design. In January 2000, following the acquisition of Yves Saint Laurent and YSL Beauté by Gucci Group, Ford assumed the position of Creative Director of Yves Saint Laurent Rive Gauche and YSL Beauté. In addition to his existing duties at Gucci, Ford worked with all creative teams at YSL to define the overall image and positioning of the YSL brand. Ford also served as Creative Director of Gucci Group. In July 2002, he was made Vice Chairman of the Management Board of Gucci Group. Ford resigned from his post at Gucci Group in April 2004, following a buyout by Pinault-Printemps-Redoute. Ford's success in the fashion industry has been recognized by his numerous awards, including three awards from the prestigious Council of Fashion Designers of America (CFDA) (1996, 2001, 2002); Rodeo Drive Walk of Style Award (2004); five VH1-Vogue Fashion Awards (1995, 1996, 1999, 2002, 2004); two awards from the Fashion Editor's Club of Japan (FEC) (2000); the Style Icon award in the 1999 *Elle* Style Awards (UK); the British *GQ* International Man of the Year award (2000); the Superstar Award at the Fashion Group International's Night of Stars (USA, 2000); Best Fashion Designer, *TIME* magazine (2001); and *GQ* Designer of the Year (2001). Most recently, Ford was awarded the first annual Fashion Design Achievement Award at the Cooper Hewitt Design Museum's National Design Awards (2003).



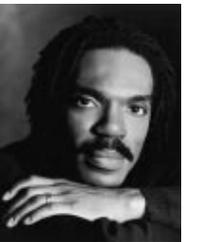
Ted Cohen



Danger Mouse



Tom Ford



Kevin Hall



Kevin Jones

KEVAN HALL

As a teenager, Kevan Hall attended Cass Technical High School in Detroit, where he studied fashion design, and won a scholarship sponsored by The Fashion Institute of Design & Merchandising/FIDM in Los Angeles. After graduating, he received the Peacock Award for Outstanding Fashion Design. In 1982, Hall — with his wife and partner, Deborah — launched Kevan Hall Couture. His collection melded a relaxed couture look with sensible pricing that pleased retailers and clients, including celebrities Meg Ryan and Natalie Cole. Hall was among the designers chosen to dress Ethel Bradley (wife of the late Mayor Tom Bradley) for the 1984 Olympics, and was nominated in 1988 by fashion retailers and the press as one of California's top designers. In 1989, he was included in the Soul on Seventh Avenue show sponsored by Fairchild Publications, and was given the NAACP's Great American Designer award. His participation in the national 1990 Absolut Vodka campaign featured in *Vanity Fair* underscored his broad-based appeal. In 1992, he was honored by The Center of Performing Arts in Southern California with a 10-year fashion retrospective. Hall branched out into motion pictures, acting as costume consultant on 1997's *Gridlock* and *Eve's Bayou*. Later, Whitney Houston commissioned Hall to design a liquid gold charmeuse gown for her special appearance in the final episode of *Boston Public*. From 1998 to 2000, Hall revived a "dead" brand to its former glory as Design and Creative Director for Halston. His sleek eveningwear was worn by a distinguished coterie of artists, including Celine Dion, Lauren Holly, Charlize Theron, Mariah Carey, Salma Hayek and Minnie Driver. Hall has made guest appearances on national TV shows such as *Inside Edition*, *The Better Half*, *SoapTalk* and *Extreme Makeover*, discussing fashion's current trends. His current signature Kevan Hall Collection emphasizes purity of style, detailed tailoring and sensuously draped streamlined silhouettes. In 2002, Hall won the 47th Annual Gold Coast Fashion Award in Chicago as Designer of the Year.

KEVIN JONES

A costume historian with a detailed knowledge of 18th, 19th and 20th century high fashion, Kevin Jones was named curator of The Fashion Institute of Design & Merchandising Museum in November 2002. After completing the Fashion Design program at The Fashion Institute of Design & Merchandising/FIDM, Jones went on to receive a B.A. in Art History at the University of California, Santa Barbara. Following graduation, Jones was hired by the Los Angeles County Museum of Art where he worked as a coordinator for Information Systems and coordinator for the Art Museum Council. Jones was then brought back to The FIDM Museum by its former curator to oversee the 12,000-piece costume collection as Collections Manager. Jones has lectured and given tours as well as television, radio and newspaper interviews. He is an active member of the Costume Society of America and a member of the Titanic Historical Society.

MARTIN KAPLAN

Martin Kaplan, Associate Dean of the USC Annenberg School for Communication, is the Director of the Norman Lear Center. A *summa cum laude* graduate of Harvard in molecular biology, a Marshall Scholar to Cambridge University and a Stanford Ph.D., he has been an Aspen Institute program officer; a federal education staffer; Vice President Walter F. Mondale's chief speechwriter and deputy presidential campaign manager; a vice president of motion picture production for Disney Studios; a film and television writer and producer (*The Distinguished Gentleman*, *Noises Off*, *Max Q: Emergency Landing*); and a radio host and commentator. Kaplan is editor of *The Harvard Lampoon Centennial Celebration, 1876-1973*; co-author (with Ernest L. Boyer) of *Educating for Survival*; and editor of *The Monday Morning Imagination* and *What Is An Educated Person?* At USC he has taught graduate and undergraduate courses in media and politics; campaign communication and entertainment; and communication and society.

RICK KARR

A broadcast and print journalist who contributes regularly to several public television and radio programs, Rick Karr also is an adjunct professor at the Columbia University Graduate School of Journalism. He currently is writing and developing *TechnoPop: How Technology Makes and Un-Makes Popular Music*, a book and documentary television series that examines technology's impact on the sound and business of music from Bach to Britney. The TechnoPop project garnered him fellowships in 2004 from the MacDowell Colony and the Center for the Public Domain. From 1999 to 2004, Karr reported from New York on culture and technology for National Public Radio News. In 1998 and 1999, he hosted the groundbreaking NPR music and culture magazine show, *Anthem*. Karr has written about culture, technology and pop music for *The Nation*, *New Musical Express*, *Sounds* and *Stereo Review*. A longtime musician, record producer, recording engineer and songwriter, Karr performs with his acclaimed band, Box Set Authentic.



Martin Kaplan



Rick Karr



Michael Patrick King

MICHAEL PATRICK KING

Michael Patrick King was the leading creative force behind the HBO smash hit *Sex and the City* throughout the show's remarkable six-year run. For the last five seasons, he was the show's head writer and chief executive producer. For his work as a writer on *Sex and the City* he was nominated for three Emmys and three Writers Guild Awards. He was nominated twice for the best director Emmy, winning for "The Real Me," an episode that also garnered him one of his three Directors Guild nominations. King began his career in New York as an aspiring actor, then began performing standup comedy and writing plays. He eventually moved to Los Angeles where he began writing and producing *Murphy Brown*. King also has served as a writer and consulting producer for the hit show *Will & Grace*. In June 2005, he debuted the HBO faux-reality series, *The Comeback*, created with and starring Lisa Kudrow.

NORMAN LEAR

Norman Lear has enjoyed a long career in television and film, and as a political and social activist and philanthropist. Known as the creator of Archie Bunker and *All in the Family*, Lear's television credits include *Sanford & Son*; *Maude*; *Good Times*; *The Jeffersons*; *Mary Hartman, Mary Hartman*; *Fernwood 2Nite*; and the dramatic series *Palmerstown, U.S.A.* His motion picture credits include *Cold Turkey*, *Divorce American Style*, *Fried Green Tomatoes*, *Stand By Me* and *The Princess Bride*. In 1999, President Clinton bestowed him the National Medal of Arts noting that "Norman Lear has held up a mirror to American society and changed the way we look at it." He has the distinction of being among the first seven television pioneers inducted into the Television Academy Hall of Fame (1984). He received four Emmy Awards (1970, 1971, 1972, 1973) and a Peabody Award (1977) for *All in the Family*, as well as awards from the International Platform Association (1977), the Writers Guild of America (1977) and many other professional and civic organizations. Lear has brought his distinctive vision to politics, academia and business by founding several non-profit organizations, including People For the American Way (1980-present); the Norman Lear Center at the USC Annenberg School for Communication (2000-present) and the Business Enterprise Trust (1989-2000). In 2000, Lear and his wife, Lyn Davis Lear, along with a friend, bought one of only 25 surviving original prints of the Declaration of Independence. The Lears are now the sole owners of this document, the "Dunlap broadside," which was printed on the night of July 4, 1776. From 2001 until the presidential election of 2004, the document toured the country as the centerpiece of the Declaration of Independence Road Trip, and its spinoff, the "Declare Yourself" young voter activism project. Through its aggressive outreach to young and first-time voters, the "Declare Yourself" project resulted in the registration of over 1 million new voters in the 2004 general election. Lear's business career began in 1959 with his co-founding of Tandem Productions, Inc. In 1974, he and his partners created T.A.T. Communications, later known as Embassy Communications. He is currently chairman of Act III Communications, a multimedia holding with interests in the recording, motion picture, broadcasting and publishing industries.

BOOTH MOORE

A former columnist for the *Washington Post*, Booth Moore joined the *Los Angeles Times* in 1996 in the Calendar section, writing the daily column "SoCal Confidential," and later moving into a field that had always been a passionate interest for her — fashion — joining *The Times'* fashion writing staff. She is now a staff of one, and in June 2004, was named Fashion Critic, the first time that title has been given to a fashion writer in the paper's history. She covers the world of fashion, with a special focus on the industry in Southern California, and twice each year attends and covers Fashion Weeks in New York, Milan and Paris. When the 9-11 tragedy occurred during New York Fashion Week 2001, she was assigned to the event, and received an Editorial Award from *The Times* for her coverage.

RICHARD JEREMY NICHOLS

Richard Nichols is the thriving force behind an anomaly in music called "The Next Movement," also known as hip-hop soul. Nichols began his career in community outreach, creating a truce between local gangs in Philadelphia while working as a jazz DJ for WRTI-FM. In the early-1990s, he founded Watch Your Back Management with artists including female MC Shorty No Mas (De La Soul), Scott Storch (producer of Dr. Dre and Questlove), and the group that put him on the map, The Square Roots, who later became known as The Roots. Nichols produced The Roots' critically acclaimed *Do You Want More* for Geffen Records. In 1999, he founded a boutique label, Motive/MCA records, and released The Roots' "You Got Me," featuring Erykah Badu, which won that year's Rap Performance Grammy. Nichols and The Roots support and develop artists with Okayplayer.com; a 24-hour working demo studio and rehearsal space; and an "idea lab" called The Black Lily, which combines open mic with showcases of female artists such as The Jazzyfatnastees and Jaguar.



Norman Lear



Booth Moore



Richard Jeremy Nichols



Sam Phillips



Laurie Racine

SAM PHILLIPS

Renowned singer-songwriter Sam Phillips made an indelible mark in the music scene with her Grammy-nominated *Martinis and Bikinis* (1994). She's followed her unpredictable muse down a zigzag path, gathering inspiration from a wide range of sources: folk, pop, vintage rock and roll, literature, philosophy, film and all the technical marvels of the recording studio. That has made her hard to categorize and market, but also that much more fascinating to follow. Phillips' 2004 release, *A Boot and a Shoe*, like her 2001 Nonesuch debut, *Fan Dance*, is fiercely intimate in atmosphere and stripped down in arrangement — not so much unplugged as unvarnished. Although Phillips has long been admired for her coolly modern take on Beatles-esque songwriting and studio craft, she decided to move away from elaborate pop production and 21st century technological upgrades with *Fan Dance*. Since then, she has stuck to the road less traveled.

LAURIE RACINE

Laurie Racine is a senior fellow at the Norman Lear Center and co-director of the Lear Center's Creativity, Commerce and Culture Project. Racine is the President of the Center for the Public Domain, a private foundation endowed by the founders of Red Hat, Inc. The Center is devoted to exploring the balance between intellectual property rights and freely reusable knowledge that is the basis of our cultural and scientific heritage. During her tenure, she co-founded Public Knowledge, a Washington, D.C.-based public interest group that is working to sustain a vibrant information commons. She serves as Chair of the Board. Racine is also the President of Doc. Arts, the non-profit corporation that produces the Full Frame Documentary Film Festival. Before joining the Center for the Public Domain, Racine was previously the Director of the Health Sector Management Program at the Fuqua School of Business of Duke University. She has spent many years as a strategist and consultant for non-profit and for-profit enterprises. Racine received a B.A. from New York University and conducted coursework for a Ph.D. in Human Genetics at the University of California, Berkeley.



Sheryl Lee Ralph

SHERYL LEE RALPH

Respected actress, singer, writer, director and producer Sheryl Lee Ralph is known for her role of Deena Jones in *Dreamgirls*, for which she earned a Tony Award nomination and a Drama Desk Award nomination for best actress. Ralph scored a top-10 selling dance hit in the mid-1980s with the infectious anthem "In the Evening." On television, she has starred in *It's a Living*, *New Attitude*, *George*, *Designing Women* and *Mo'Nisha*. Her extensive film credits include *Sister Act II*, *The Flintstones*, *The Mighty Quinn*, *Mistress* and *The Distinguished Gentleman*. She won the 1991 Independent Spirit Award for best supporting actress in *To Sleep With Anger*. Ralph wrote, directed and starred in the 1998 award-winning film short, *Secrets*, also featuring Alfre Woodard, La Tanya Richardson and Robin Givens. Since 1991, Ralph has created, produced and presented the critically acclaimed "Divas Simply Singing," an annual event featuring top female entertainers in film, stage, television and music and benefiting Project Angel Food and The Safe Place for Pediatric AIDS.

CAMERON SILVER

Named one of *Time* magazine's "25 Most Influential Names and Faces in Fashion," Cameron Silver has dressed A-list celebrities, including Nicole Kidman, Jennifer Lopez and Renée Zellweger, in upscale vintage designs; has appeared on *E! Entertainment*, the Style Network and *Fashion File*; and has written for *Harper's Bazaar*, *V Magazine*, *Elle* and *Harpers & Queen*. Silver is completing his first book on Kaisik Wong (Rizzoli). Silver's mini-empire encompasses two retail stores, Decades and Decadestwo, on Melrose Avenue, plus an in-store Decades boutique inside the Comme des Garçons' Dover Street Market in London. *Vogue* calls Decades "the nation's premier source for fabulous '60s and '70s pieces." Fashion designers, including Tom Ford, Anna Sui and Nicolas Ghesquière, have raided the stores for inspiration, while costume designers, including Michael Kaplan and Colleen Atwood, stock up on wardrobe for their stars. In 2004, Silver was named Creative Consultant to the French fashion house, Azzaro, founded in 1962 by the late Loris Azzaro.

RANI SINGH

Rani Singh is Senior Research Associate in the Department of Contemporary Programs and Research at the Getty Research Institute. Her research and programming focus is on the history, preservation and presentation of alternative media and avant-garde film. She also is coordinating the documentation of experimental film and video in Los Angeles since 1945 for the Research Institute's "Modern Art in Los Angeles" project. Singh has been Director of the Harry Smith Archives since 1991. Currently she's directing a documentary on the filmmaker and anthologist Harry Smith.



Rani Singh

JONATHAN TAPLIN

Jonathan Taplin, a specialist in international communication management and the field of digital media entertainment, began his entertainment career in 1969 as Tour Manager for Bob Dylan and The Band. In 1973, he produced Martin Scorsese's first feature film, *Mean Streets*, which was selected for the Cannes Film Festival. Between 1974 and 1996, Taplin produced television documentaries, including *The Prize* and *Cadillac Desert* for PBS, and 12 feature films, including *The Last Waltz*, *Until The End of the World*, *Under Fire* and *To Die For*. His films were nominated for Oscar and Golden Globe awards and chosen for the Cannes Film Festival seven times. Taplin was a founder of Intertainer, the pioneer video-on-demand company for cable and broadband Internet markets, and has served as its Chairman and CEO since June 1996. He holds two patents for video-on-demand technologies, and has acted as a consultant on digital media for entities as diverse as McKinsey & Company and the City of Los Angeles. Taplin graduated from Princeton University. He is a member of the Academy of Motion Picture Arts and Sciences, the Annenberg Research Network for International Communication and sits on the advisory board of the Democracy Collaborative at the University of Maryland.

GUY TREBAY

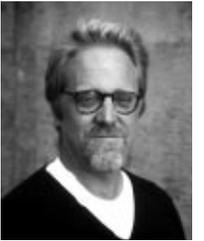
Guy Trebay joined *The New York Times* as a reporter in 2000. He was formerly a columnist at the *Village Voice*, where he covered New York for two decades. He has written for many national magazines, including *The New Yorker*, *Esquire*, *Harper's*, *Travel & Leisure*, *Conde Nast Traveler* and various literary magazines, among them *Grand Street*. A collection of his stories about New York City, *In the Place to Be*, was published in 1994; selections are anthologized in the forthcoming book, *Empire City: Three Centuries of Writing About New York*. Among his journalism awards is Columbia University's Meyer Berger award, which was presented to him twice, in 1992 and 2000. Trebay also received the Deadline Club Front Page Award and a Pulitzer Prize nomination. He lives in New York City.

SIVA VAIDHYANATHAN

Siva Vaidhyathan, a cultural historian and media scholar, is the author of *Copyrights and Copywrongs: The Rise of Intellectual Property and How it Threatens Creativity* (New York University Press, 2001) and *The Anarchist in the Library* (Basic Books, 2004). Vaidhyathan has written for many periodicals and online publications, including *The Chronicle of Higher Education*, *New York Times Magazine*, *The Nation*, MSNBC.com, Salon.com and openDemocracy.net. After five years as a professional journalist, Vaidhyathan earned a Ph.D. in American Studies from the University of Texas at Austin. He has taught at Wesleyan University and the University of Wisconsin at Madison, and is currently an assistant professor of Culture and Communication at New York University. He lives in Greenwich Village, USA.

DAVID WOLFE

David Wolfe is Creative Director for Doneger Creative Services, the trend and color forecasting and analysis department of The Doneger Group, whose clients include an international roster of designers, manufacturers and retailers. As Creative Director, Wolfe analyzes trends influencing the men's, women's and youth apparel and accessories markets as well as big-picture developments in style, culture and society. Wolfe's wit and wisdom have earned him a stellar reputation over his 35 years in the fashion industry. He is known as "America's Foremost Fashion Forecaster" and is the most quoted authority in the industry. His views and quips appear in such diverse publications as *The Wall Street Journal*, *Women's Wear Daily*, *Vogue*, *Glamour* and *Forbes*. Wolfe also serves as International Fashion Editor of *Men Mode* and *Couture* magazines, glossy high-fashion publications in the Far East, and has been featured on CNN, QVC, *Entertainment Tonight*, *The Today Show*, talk shows and news programs, and as a celebrated speaker at major fashion industry events and shows. Wolfe began his career in a small-town department store, where his responsibilities included that of fashion coordinator, buyer, copywriter, illustrator and advertising manager. In the 1960s, he moved to London, where he quickly established himself as a leading fashion artist published in *Vogue*, *Women's Wear Daily* and *The London Times*. In 1969, Wolfe joined the nascent "fashion service" industry and, as Creative Director of I.M. International, became one of the world's leading fashion forecasters and authorities, among the first to discover talents such as Giorgio Armani, Karl Lagerfeld and Gianni Versace. In the early-1980s, Wolfe helped to found The Fashion Service, and returned to the United States to head TFS as its president for a decade. He joined The Doneger Group in 1990.



Jonathan Taplin



Guy Trebay



Siva Vaidhyathan



David Wolfe



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RESOURCES



BY PATRICK REED

ANNOTATED BIBLIOGRAPHY

Agins, Teri. *The End of Fashion*. New York: Quill, 1999.

In this general audience book, the longtime fashion reporter for the *Wall Street Journal* discusses several paradigm-altering changes that occurred within the fashion industry during the late-1980s and throughout the 1990s. According to Agins, the fashion industry's creative model for most of the 20th century — couture largely setting the trends, the rest of the industry following — has been transformed by a shift in consumer expectations. Elite, formal wear is on the wane, and functional yet trendy apparel is booming, meaning that today just as many creative decisions are made in the marketing of clothes as in the designing of them. The author shapes her broader points in specific chapters examining the changing fortunes of several individual designers, including Ralph Lauren and Tommy Hilfiger's competition during the 1990s and Giorgio Armani's successful seduction of Hollywood, from *American Gigolo* onward, as his clothing became a perennial favorite for Oscar night's red carpet fashion.

———. "Fashion: Some Clothes of Questionable Vintage." *Wall Street Journal*, July 27, 2001.

Report and analysis concerns the widespread marketing of "vintage fashion" by established, upscale retailers. Several interview subjects remark on the irony of second-hand, ostensibly cheap clothing selling for like-new prices (for example, at New York retailer Henri Bendel, a Diane von Furstenberg knit dress from the 1970s sells for \$190, compared to \$225 for a new, silk von Furstenberg dress). The author places this trend in a larger context of cultural recycling, an endemic, recurring pattern of the overall fashion industry that is crucial to its vitality.

Agins, Teri, and Sally Beatty. "In a Style Replay, It's Ralph's Turn to Fight With a Licensee." *Wall Street Journal*, Feb. 5, 2003.

Report on the growing battle between Polo Ralph Lauren Corp. and its licensee for women's clothing, Jones Apparel Group, over the rights to manufacture Lauren, Polo's signature women's line. After the disappointing financial performance of Ralph, Polo's casual women's line, the designer expressed a desire to terminate the license rights for the successful Lauren line early, at the end of 2003 when the Ralph rights were to expire. This dispute is yet another example of designers attempting to regain control over their brands in recent years (i.e., Calvin Klein's near-lawsuit with Warnaco in 2001).

Agins, Teri, and Tara Parker-Pope. "Common Scents: It Isn't a Nose Dive, But Perfume Sales Are Steadily Dropping." *Wall Street Journal*, Dec. 23, 1998.

Extensive report on changing consumer opinions about designer fragrances, and the related adjustments made by companies to their production and marketing methods in an attempt to reverse modest declines in sales during the late-1990s. The authors provide a solid historical overview of the fragrance sector of the fashion industry, detailing the Chanel No. 5-fueled boom in fragrance sales in post World War II America; continued strong growth during the successive decades; and humorous industry stories, such as the unveiling of the potent Giorgio perfume in the early-1980s, during which the first bottle was escorted via stretch limousine to a downtown Cleveland department store. Several experts blame the glut of new fragrances brought to market in the 1990s (813, according to the article) for the current stagnation, and note a consumer movement toward lower-priced (and lighter-smelling) body washes sold in department stores.

Ash, Juliet, and Elizabeth Wilson, eds. *Chic Thrills: A Fashion Reader*. Berkeley: University of California Press, 1993. Collection of cultural criticism contains several pieces that examine the economic structures of the industry

▲
Women's Wear Daily editor Rose Apodaca engages a packed crowd at "Ready to Share" with the history of the T-shirt.

during the 20th century. Ellen Leopold's "The Manufacture of the Fashion System" argues that the industry's adoption of a rapid turnover in product (apparel) during the 1920s and 1930s — particularly in America — was the result of a failure to "fully embrace mass production techniques" rather than due to the demands of consumers. Angela Partington's "Popular Fashion and Working-Class Affluence" assesses women's fashion in post-World War II Western societies, and disputes the dominant "trickle-down" or emulation model that held working-class women to be passive or deferential to elites in their consumption practices. Other essays focus on such disparate topics as: the catwalk as performance, fashion photography and ethnic dress (Asian, Irish, black street style).

Avins, Mimi. "Red-Carpetbagger." *Los Angeles Times*, March 14, 2003.

Entertaining profile of fashion-celebrity critic Steven Cojocar, a regular presence in *People* magazine and on television's *Today* show and *Access Hollywood*, as well as at most awards shows' red carpet promenades. The author details Cojocar's upbringing (as a celebrity-obsessed "nerd") and his dues-paying days at various Hollywood publicity jobs, and places him in a select group of fashion arbiters from past and present that includes Mr. Blackwell and Joan Rivers. With a quick-quipping, unfailingly enthusiastic and gossip-centric demeanor, Cojocar gives fashion fans what they want from a commentator, according to E! Television's style director, who notes, "Entertainment is No. 1. Learning about fashion is second."

Bache, Abigail. "Is Intellectual Property Fashionable?" Essay entry for the WIPOUT counter-essay contest, Dec. 17, 2001.

[<https://www.kent.ac.uk/law/undergraduate/modules/ip/resources/Wipout2.htm>]

Perceptive essay examines several aspects of British intellectual property law as it affects the fashion industry — in particular, how the cycle of creativity in design and apparel manufacture may be stifled by restrictive patent and copyright protections. The author argues that loose IP restrictions on fashion throughout the years have enabled the industry to flourish, and allow for appealing, affordable and "cool" replicas of high-end designs for the general public. "It is this cycle of fashion that ensures a healthy and imaginative growth of clothes design and an accessible fashion industry," one that is now threatened by increased restrictions on the patenting of designs, observes the author.

Ball, Deborah. "The Brand Rules Fashion's New World." *Wall Street Journal*, March 12, 2001.

A summer 2000 shakeup of the Jil Sander design group — in which the namesake designer quit and initially was not replaced by the group's new owner, Miuccia Prada — exemplifies an attitude shift within the fashion industry, one that elevates brand promotion to the place of creative ingenuity, according to the author. One interview subject, a New York retail consultant, insists that the industry's demands as a global economic enterprise are necessitating a movement toward overall brand marketing. Others, such as Gucci's Tom Ford, say that designer autonomy is still central to modern fashion, and maintain that individual creativity still flourishes, despite the current climate of corporate acquisition.

Barnard, Malcolm. *Fashion as Communication*. London: Routledge, 1996.

Essay compilation assesses fashion as the product of a communication-rich culture. Building on previous cultural studies scholarship from thinkers such as Georg Simmel and Raymond Williams, the essays include several citations of Dick Hebdige's examination of youth-fashion subcultures and Elizabeth Wilson's writing in *Adorned in Dreams*. Summaries of other scholarly opinions and analyses are organized into specific chapters that deal broadly with fashion as a cultural foundation of modern, Western, capitalist societies.

Beatty, Sally. "Calling Fashionistas! Cable Channels Flock to Fashion Shows." *Wall Street Journal*, Oct. 15, 2002.

Brief report on the increase in fashion-oriented programming on cable television, due to the advent of digital cable's larger channel capacity and to the growing interest of advertisers (including non-fashion companies, such as auto manufacturers). The author cites pioneering shows on CNN and MTV, as well as the successful VH1-*Vogue* Fashion Awards, and analyzes the new efforts at fashion programming individually (including the WE: Women's Entertainment cable network's expansion of the New York-area hit *Full Frontal Fashion* into a nationwide program and E! Entertainment Television network's development of a sister cable channel called Style).

Bellafante, Ginia. "In Love With Asia, Muse and Market." *New York Times*, Feb. 25, 2003.

Intriguing report on a revival of Asian-influenced style in the new apparel lines of several international designers, including Donna Karan, Miuccia Prada and Tom Ford for Gucci. The author discusses the unveiling of several Asian-influenced garments in Prada's Broadway-Manhattan store, as well as the expansion of Pearl River Mart, a 25-year-old Chinese department store located nearby. The article examines Asian culture's longstanding influence in the West in relation to this trend (Wong Kar-wai's stylish 2000 film, *In the Mood for Love*, is a recent inspiration), although a costume curator specializing in Oriental dress opines that many of the new Western adaptations vulgarize the traditional Asian adherence to sexual modesty in clothing design.

Blau, Herbert. *Nothing In Itself: Complexions of Fashion*. Bloomington: Indiana University Press, 1999.

Wide-ranging, highly detailed and analytical assessment of fashion from a cultural studies perspective, often employing a postmodernist, visual-centric approach to examine its impact but also engaging a number of other theories and thinkers (from Walter Benjamin and Charles Baudelaire to artist and *Vogue* contributor Cecil Beaton). The book references many designers and trends from the past century — for example, Chanel's and Balenciaga's creations form the initial backbone of a perceptive chapter investigating the shifting boundaries and interrelations between haute couture and ready-to-wear. Elsewhere, Blau cites designers such as Vivienne Westwood, John Galliano and Alexander McQueen as paragons of historically referential fashion creation, and debates gender-body image issues by using Rei Kawakubo and Jean-Paul Gaultier's designs as referents. Other passages explore the permutations of "trickle up"

fashion — i.e., 1970s' punk styles and other subcultural influences — as well as late-90s' developments, including a discussion of logos, brands and mass-market retailers. Voluminous endnotes and astutely chosen photographs buttress the author's myriad observations.

Borrelli, Laird. *Net Mode: Web Fashion Now*. New York: Thames & Hudson, 2002.

Incisive examination of the burgeoning synthesis of Internet technology with fashion's merchandising, brand creation and editorial coverage. Compiled by the editor of Style.com, the guide is sectioned into three areas: Fashion Identity (designer sites); Fashion Sale (e-commerce sites, including "teaser" sites offering product descriptions and directions for offline purchase); and Fashion Talk (fanzine and online periodical sites). The highlighted sites feature clothing lines and topics circa late-2001, and the author does a commendable job of including both widely popular and financially well-supported venues such as Style.com, Dior.com, eLuxury.com (backed in part by the conglomerate LVMH) and Net-a-Porter.com, as well as upstart enterprises more attuned to specific items-consumer bases, such as Spain's itfashion.com, developed by three college students with a mandate to promote "a more heterogeneous, multicultural and extensive vision of fashion." The majority of the sites utilize software programs Flash or Shockwave to achieve their inviting visual interfaces, most of which have been updated since this book's release.

Boucher, François. *20,000 Years of Fashion: The History of Costume and Personal Adornment*. Expanded Edition. New York: Harry N. Abrams, 1987.

Extensively researched, immaculately illustrated history of clothing's evolution, from its prehistoric beginnings through the early-1980s. In minute detail, the author describes changes in apparel from century to century, and era to era. One caveat: After covering costume development in ancient civilizations around the world, the author focuses primarily on Western costume from the 12th century onward. Following his description of the emergence of the haute couture industry during the mid-19th century, the author provides informative capsules on individual designers, primarily European ones.

Bounds, Wendy. "Fashion: The Next Leisure Suit." *Wall Street Journal*, July 17, 1998.

Entertaining assessment of several prevailing fashion trends of the late-1990s that examines how they fit in contextually to the larger culture and speculates on which ones will be regarded as time-capsule embarrassments by future fashion historians. Topics for discussion, analysis and approval-disdain include: monochromatic shirt and tie (initially popularized by the *Today* show co-host Matt Lauer); the blue dress shirt; hip-hop apparel (and the lionization of logos); and decorative formal wear. Regarding the early-1990s grunge fad, designer Donna Karan opines that future critics will declare that the worst part of 90s fashion was, in fact, "the seventies."

Branch, Shelly. "Stayin' Alive: Velour Suddenly Doesn't Rub People the Wrong Way." *Wall Street Journal*, Dec. 6, 2002.

Lively report on a fad-in-the-making in 2002-2003: the hip-hop and celebrity-fueled resurgence of velour fabric into American

fashion consciousness. The article briefly recounts the history of the fabric (former velour wearers: Napoleon, Mr. Spock), and velour's association with the 1970s' disco era is remembered less than fondly by several observers. Hip-hop's resurrection of velour as "athleisure" has encouraged mass merchandisers such as the Gap and The Limited, among others, to implement it into their apparel lines, while, on an individual level, upscale fashionistas invent ingenious ways to accessorize what amounts to a jogging tracksuit. Detractors have their say, and some wonder if velour will appeal to fashion-conscious males who don't follow hip-hop, but the urban retailers interviewed believe that the "velour ethic" will endure, at least through the current fashion cycle.

Brubach, Holly. *A Dedicated Follower of Fashion*. London: Phaidon Press, 1999.

Collection of essays dating from the mid-80s to the mid-90s by a fashion writer for *The Atlantic Monthly*, *The New Yorker* and *The New York Times Magazine*. Topics include: Ralph Lauren's image-making empire; Yves Saint Laurent's legacy; and the designer sunglasses boom in the 1980s. In one essay, a New York City megalopolis summer-time travelogue, the author visits several area beaches and comments on the diverse fashion statements on display. Another, particularly insightful essay distinguishes the Parisian conception of fashion as a central, native element of society from American attitudes toward fashion (as ephemera, or as populist "fitting in"). Overall, the writer's engaging and conversational style helps to support her observations on fashion's changing trends and its dissemination into mainstream consumer culture during the past 20 years.

Bruzzi, Stella, and Pamela Gibson, eds. *Fashion Cultures*. London: Routledge, 2000.

Eclectic anthology of academic writings on fashion features essays derived from, among other methodologies, postmodern theory, feminist criticism and subculture analysis. Part Three, "Images, icons and impulses" contains essays on such fashion-entertainment paragons as Marcello Mastroianni, Grace Kelly, Cary Grant and Gwyneth Paltrow. Other topics include: fashion design brand-creation on the Internet; "catwalk politics"; Gianni Versace's exploitation of glamour, celebrity culture and mass media in building his fashion empire; and an overview of U.K. fashion as a culture industry.

Bunn, Austin. "Not Fade Away." *New York Times Magazine*, Dec. 1, 2002: 60+.

Magazine piece focuses on the niche popularity of vintage-styled blue jeans among discerning denim aficionados. The trend toward "new vintage" began in Japan during the 1990s, according to the author's research, as decades-old pairs of extremely worn-out jeans were coveted by Japanese buyers obsessed with authenticity. As it now stands, demand for soiled, torn jeans in the alternative corners of the U.S. fashion scene has spawned a sub-industry focused on replicating vintage jeans of yesteryear (anything pre-1980s). Replicas from a leading, Levi's-contracted "counterfeiter" based in western Kentucky are compared with actual Depression-era jeans to illustrate the degree of similarity.

- Buxbaum, Gerda, ed. *Icons of Fashion: The 20th Century*. Munich: Prestel Verlag, 1999. History of fashion over the previous century offers a concise, appealing format: two pages (verso-recto) devoted to numerous important topics (people, styles, movements, etc.) from designer Paul Poiret's Orientalism in the early-1900s to John Galliano's historically rich, "stacy fashion" of the 1990s, and most everything in between. The illustrations and photographs for each entry generally are wisely chosen, and most complement the four or five paragraphs written on each topic (authors include several highlighted in this bibliography, including Valerie Steele and Elizabeth Wilson). Timeline biographies of fashion designers are featured either with their specific entry, or in an appendix that also includes a select bibliography. One especially informative aspect of this history is its celebration of some of fashion's more influential illustrators, such as Erté (30-31) and René Grau (70-71).
- Carr, David. "Anna Wintour Steps Toward Fashion's New Democracy." *New York Times*, Feb. 17, 2003. Profile of *Vogue* editor Anna Wintour describes her self-assured managerial style and strategy that reversed the fortunes of the 111-year old fashion magazine. Several cohorts and competitors comment on Wintour's shift toward a more democratic, inclusive concept of contemporary fashion. As a "stealth populist," Wintour has opened up the magazine's coverage to decidedly untraditional haute couture areas: more celebrity coverage; pregnancy (the Brooke Shields cover); hip-hop fashion; and, especially, the collaboration with VH-1 for a cable TV fashion awards show.
- . "The News Media; In Style's World of Fashion." *New York Times*, Feb. 25, 2002. Analysis of the growth and influence of *InStyle* magazine since its debut in 1994 with founding editor Martha Nelson. As Nelson prepares to take the editorial reins at *People*, the author says that her emphasis on availability over exclusivity means that she "will be remembered for taking fashion out of the dressing rooms of Paris and onto the runway of life." *InStyle* is credited with pushing celebrity lifestyle into the forefront of fashion coverage; spurring new designs and clothing lines; and blurring, if not erasing, the distinction between advertising and editorial function. The resulting de-emphasis on articles is brushed off as unimportant, since "nobody actually reads a fashion magazine." High-end fashion magazines such as *Vogue* and *Harper's Bazaar* have shifted their own coverage due to *InStyle's* success, and an upstart publication, *Lucky*, is viewed as a possible challenger to *InStyle's* supremacy in the "mag-a-log" market.
- Chaplin, Julia. "A Runway Fair That Still Packs the House." *New York Times*, Oct. 14, 2001. Article covering the yearly *Ebony* Fashion Fair, a national tour sponsored by *Ebony* magazine since 1958, which attracts several hundred thousand spectators and raises money for numerous charities. The longtime success of the Fashion Fair is attributed to its mixture of lavish apparel and localized presentation. Regarding the event's influence, founder Eunice Johnson explains how she

persuaded several top French designers during the 1960s to include black models in their runway shows. The current enormous influence of hip-hop fashion (and its envelope-pushing sexuality) is contrasted with the more traditional couture of the *Ebony* Fashion Fair; as the author observes, the lack of "ghetto fabulous" cool among the fair's chosen designers has had no negative impact on its popularity.

- Chensvold, Christian. "Past Perfect: Retro Designers See Business Boom." *California Apparel News*, March 28-April 3, 2003. Article on the revival of "retro" fashion in the Southern California design and merchandising industry. Inspired by the swing revival of 1940s-1950s fashion that occurred during the mid-1990s, this re-revival incorporates more durable fabric design and thus may endure longer and have more of a cultural impact than before, according to industry observers. The article mentions several designers and labels, including Alicia Estrada's Stop Staring label, which specializes in vintage dress designs; Steady Clothing's men's bowling shirts; and the Da Vinci label, a bastion of Rat Pack style founded in 1952 that has found favor with young hepcats. Los Angeles stylist Jenna Kautzky notes, "*West Side Story* seems to be the look right now," and refers to the echoes of 1950s-1960s style in the current output of international designer Marc Jacobs.
- Clancy, Deirdre. *Costume Since 1945: Couture, Street Style, and Anti-Fashion*. New York: Drama Publishers, 1996. Mixing text and illustrations, the author covers fashion's development during the last half of the 20th century, focusing just as much on the dress of mainstream Western society and subcultures as on the luxurious currents of haute couture. Each illustration is coupled with a description of the garment and its designer (if applicable) and function in the culture of its particular era. The illustrations are primarily black and white line drawings, with three small sections of color drawings. Apart from brief summaries of particular eras at the beginning of each chapter, the writing on fashion is descriptive and informal (as evidenced by the small bibliography).
- Coleridge, Nicholas. *The Fashion Conspiracy: A Remarkable Journey through the Empires of Fashion*. New York: Harper & Row, 1988. Chapter 15, "Beware of Imitations — the Pirates of Seoul," leads with a story of sabotage and theft in China in 1986, when 11,000 counterfeit Lacoste T-shirts were stolen from a crashed truck only to resurface in South Korea months later. This recounting leads into an overview of the prevalence of unauthorized copying in the 1980s fashion industry, and a discourse with several international designers, all of whom agree on the enormity of the situation but offer differing opinions about its degree of harm. Vague intellectual property laws are part of the problem, notes the author, who questions whether the industry truly wants rigidly enforced restrictions on creative reinterpretations. One London designer perfectly expresses the overall ambivalence with her comments regarding plagiarism: "[I]ntellectually, it's lovely, it's flattering. Morally, it's disgusting."
- Cunningham, Bill. "Bill on Bill." *New York Times*, Oct. 27, 2002. Fascinating autobiographical piece by a renowned "street shooter" (fashion photographer) who navigates the bustling grid of

- Manhattan to capture random, fleeting moments of fashion genesis among the populace. Cunningham recounts his long march toward occupational nirvana: He was first a milliner for society women in the 50s, then a fashion writer before starting his photography career in the mid-60s. Cunningham extols the exciting unpredictability of his job — you never know when you'll find a "stunner" — and shares his impetus: "[T]he main thing I love about street photography is that you find the answers you don't see at the fashion shows. You find information for readers so they can visualize themselves I let the street speak to me." (There is a companion article about Cunningham, written by William Norwich, in the same edition.)
- Dickerson, Kitty. *Textiles and Apparel in the Global Economy*. 3rd ed. Upper Saddle River, NJ: Merrill, 1999. Textbook comprehensively covers the economics of the textile and apparel production industries on an international level. The author examines the historical development of these industries in relation to the overall evolution and expansion of global trade, especially from the Industrial Revolution onward, and recognizes the textile and apparel industries as central, often determining factors in the formulation of new treaties and agreements. Trade policies, import-export procedures, labor disputes and individual sectors of both industries are explored, with informative glossaries and bibliographies following each specific chapter.
- Dwight, Eleanor. *Diana Vreeland*. New York: William Morrow, 2002. Thoroughly researched and well-written biography of one of the leading icons of 20th century fashion. The scope of Vreeland's life is covered by the author, through her voluminous interviews with friends, associates and family members, and her collection of extensive source material from Vreeland's three main careers in fashion: fashion editor at *Harper's Bazaar* from the mid-1930s to the early-1960s; editor in chief of *Vogue* from the early-1960s to the early-1970s; and consultant at the Metropolitan Museum of Art's Costume Institute during the 1970s and early-1980s. Vreeland's social and family life are explored, but the more illuminating passages document her inexhaustible commitment to capturing fashion's vitality as it impacted culture (reflected in, among other things, her demanding leadership style). Insightful sections include: Vreeland's time during the late-1920s and early-1930s in Europe, where she first became attracted to haute couture (Chanel, Schiaparelli); her relationships with fashion photographers and models (Richard Avedon, Veruschka), whom she sent to far-off locales for ambitious shoots during the *Vogue* years; and her willingness to mix historically inapplicable garments together to achieve the right "look" while at the Met. Excellent photograph selections (color and black and white).
- Fairchild, John. *The Fashion Book*. London: Phaidon Press, 1998. Thick, oversize encyclopedia of fashion, one page per entry, limited to short, approximately 100-word biographies and one photograph or illustration. Five hundred representatives of the fashion world are included: couture and ready-to-wear designers, costume designers, photographers, models, makeup artists, accessory craftspeople, illustrators, publishers-editors, retailers and icons. Despite the brevity of biographical information, this anthology is quite useful and informa-

- tive — the picture selection is especially impressive. Without fail, the contributors make illustrative choices (an Art Deco-influenced dress represents 1920s' designer Jean Patou; a sheath dress photographed by Herb Ritts in a risqué 1990s' ad campaign captures Valentino's mastery). The breadth of entries allows for the inclusion of figures from all corners of fashion; interestingly, although Marilyn Monroe appears in several listings, there is no entry for her.
- . *The Fashionable Savages*. Garden City, NY: Doubleday, 1965. Personalized, opinionated account of the fashion industry during the early- and mid-1960s from the editor-publisher of *Women's Wear Daily*. Brief chapters focus on: individual couturiers based in Paris ("King" Balenciaga, Chanel, Dior, etc.) and America (Norman Norrell in New York, James Galanos in Los Angeles, and others); influential consumers (social elites, movie stars, young trendsetters); and Fairchild's print media peers (*Vogue's* Diana Vreeland, the *New York Daily Tribune's* Eugenia Sheppard). Informative chapters on Jacqueline Kennedy and the daily machinations of the industry's U.S. center, New York City's Seventh Avenue, where the "basic instinct," according to Fairchild, is that "someone will copy me, steal my ideas." Therefore, "Seventh Avenue copies Paris."
- Frankel, Susannah. *Visionaries: Interviews With Fashion Designers*. London: V&A Publications, 2001. Captivating interviews with 23 internationally renowned designers feature many citations of influences, and comment on fashion's evolution away from the dominance of haute couture into a more universal, egalitarian organism (not all of those interviewed view this as a favorable development). Retired legends Valentino and Yves Saint Laurent (the latter in a very brief interview via fax) look back on their careers but seem just as excited about the present scene. Asked whether she minds when her singular designs are adapted for more commercial uses, Rei Kawakubo of Comme des Garçons replies, "If my ultimate goal was to achieve financial success, I would have done things differently, but I want to create something new."
- Frings, Gini Stephens. *Fashion: From Concept to Consumer*. 6th ed. Upper Saddle River, NJ: Prentice Hall, 1999. Textbook offers a broad overview of every aspect of the fashion industry, including its historical development, process of fabric production, successful marketing strategies, and retailing and merchandising. Useful timelines cover specific eras in fashion, the popularity of influential designers, and the yearly international schedule for couture collection and apparel line unveilings. While furnishing little in-depth scholarship on fashion, this book is a useful introductory resource for those unfamiliar with the history, creative scope and inner-workings of the industry.
- Galante, Pierre. *Mademoiselle Chanel*. Translated by Eileen Geist and Jessie Wood. Chicago: Henry Regnery Company, 1973. Accessible overview of the life and career of Gabrielle "Coco" Chanel based on extensive research and interviews with people who worked with or were otherwise close to the famous designer, especially during her later years. Chanel's dedication toward the "liberation" of women from the confining nature of the Charles Fredrick Worth-era

style is praised, while her often-contemptuous attitudes toward her employees and peers (e.g., Schiaparelli, Courrèges, Cardin), and her refusal to acknowledge the practicality of the post-World War II “ready-to-wear” surge is criticized. Chanel’s refreshing acceptance of imitation of styles and garments surfaces both early in her career (opposing Paul Poiret, she states, “Fashion should not come from the street, but it must reach down into it.”) and later on (“A copy is a tribute to creation! A copy is love!”). Compelling sections deal with Chanel’s initial foray into 1930s’ Hollywood, where she designed for Marlene Dietrich, among other luminaries, and the development of the wildly popular Chanel No. 5 fragrance. Chanel’s numerous failed romances, general aloofness from her peers and essentially solitary nature form the emotional thread that runs throughout this biography.

Gerston, Jill. “Oscar Films/Glamour; Win or Lose, It’s How You Look That Counts.” *New York Times*, March 10, 2002.

Lengthy, entertaining preview piece that bolsters *New York Times* fashion editor Cathy Horyn’s subsequent review of the fashion buzz on Oscar Night 2002. Many observers of the 1990s’ explosion in Academy Awards fashion coverage offer analysis of the high stakes involved for designers and — even more so, it is claimed — for actresses. The author also provides crucial historical perspective: Even after the Oscars became televised in 1953, actresses regularly wore off-the-rack apparel (or in Joanne Woodward’s case, home-made clothing) for nearly 40 years as the world of haute couture remained distant from Hollywood’s biggest night. Giorgio Armani’s success in dressing several actors and actresses in the late-80s to early-90s is held to be a key breakthrough, and since then, as the author and others note, numerous Academy Awards attendees have impacted celebrity culture (and the fashion pages) even as the majority of Oscar-night dress decisions have become more cautious and conservative.

Golbin, Pamela. *Fashion Designers*. New York: Watson-Guption Publications, 1999.

Encyclopedia of fashion designers from World War II onward is rich with photographic and illustrative support. The author constructs a thematic thread that runs through many of the entries: the ever shifting relationship between couture and ready-to-wear in setting trends and inspiring designers. Menswear is hardly discussed, but otherwise this is a comprehensive and visually arresting overview of the industry’s creative pioneers. Notable entries include: Azze-dine Alaïa, Charles James, Halston, Thierry Mugler and Jil Sander, among others.

Granatstein, Lisa. “Fashion Forward.” *Mediaweek*, Oct. 23, 2000.

Article quotes *The End of Fashion’s* Agins and others on the changing forces in the fashion-publication marketplace, in which magazines with a more populist ambience, such as *Marie Claire* and *InStyle*, have gained sizeable circulations and newsstand sales. Long-established fashion tomes, such as *Vogue*, *Harper’s Bazaar* and *Elle*, are examined in comparison to this fast-rising new wave, and a vice president at Polo Jeans notes that current editors and publishers are far more receptive to consumer and public demand (be it a desire for more

celebrity coverage or more emphasis on streetwear) than were their more authoritative predecessors from years past (such as *Vogue’s* Diana Vreeland and *Harper’s Bazaar’s* Carmel Snow), who were “not as involved in servicing the times.”

Gremillion, Jeff. “They Wear It Well.” *Mediaweek*, Jan. 27, 1997.

Report on the widespread upsurge in fashion-related advertising space in entertainment-oriented publications notes the increased amounts of editorial coverage of fashion-related topics as a primary cause for this trend. Many established publications have embraced fashion as a regularly recurring subject, from general pop-culture chronicles (*Entertainment Weekly*, *Us Weekly*) to film (*Premiere*) and music (*Vibe*, *Rolling Stone*) magazines. The nascent circulation growth of the 2-year-old *InStyle* magazine also is cited as evidence of a continuing fashion-entertainment convergence within the publishing world.

Haedrich, Marcel. *Coco Chanel: Her Life, Her Secrets*. Translated by Charles Markmann. Boston: Little, Brown and Co., 1972.

Biography of the fashion designer derives its narrative from personal interviews the author conducted with Chanel beginning in 1959 and continuing until her death in 1971. It follows that the most interesting material concerns Chanel’s late career: her return into couture in the 1950s; her delight in devising and pronouncing numerous “maxims” on fashion, style, and life and death (many of which are collected on pages 251-255); her dissatisfaction with many designers of the 50s and 60s; and her lifelong desire to create a lasting style that overcomes the seasonal vagaries of the fashion system.

Heller, Zoë. “Movin’ On Up.” *Vogue*, March 2003: 554+.

Report on the re-emergence of media darling-fashion designer Isaac Mizrahi, one of the most lauded designers of the 1990s and the subject of the 1995 documentary, *Unzipped*, who left Chanel in 1998 after failing to establish any profitable ready-to-wear lines. Mizrahi’s comeback is ambitious: It involves the establishment of a super-exclusive haute couture salon, IM to Order, and even more risky, a contract with mass-market retailer Target for modestly priced clothing. The designer intends to maintain his presence on the cable channel Oxygen, where he has hosted *The Isaac Mizrahi Show* for the previous three years. If his gambles pay off, the author believes the likable Mizrahi may rise to the forefront of what has become a fashion-entertainment synergy movement.

Hirschberg, Lynn. “Luxury In Hard Times.” *New York Times Magazine*, Dec. 2, 2001: 68+.

Magazine profile of fashion designer Tom Ford, the creative force behind the phenomenal success of Gucci during the late-1990s, and at the writing of this article, in charge of transforming the declining Yves Saint Laurent house into a similarly powerful global brand. In addition to coverage of Ford’s personal history, his unequalled business acumen, his eye for others’ talent and his belief in astrology (“I’m a Virgo”), Ford’s creative energies are praised — in particular, his knack for recombining fashion from past eras into new statements is evidenced by 2001’s “shirt of the season,” a YSL blouse that reworks a similar, “hippie” look from Saint Laurent’s mid-1970s’ heyday. Furthermore, Ford insists on envisioning his clothing within

a larger framework of a consumer’s desires: He comments on the differences between a “Gucci” woman and a (more decadent) “YSL woman,” and takes credit for recognizing that, in the age of satel-lites and the Internet, it is now possible for fashion-conscious people around the world to share the same desires. Other topics in this long, informative piece: French resistance to the American Ford’s re-envisioning of the YSL line; Ford’s and others’ comments concerning the effect of 9-11 on the industry; and the designer’s awareness that his stint at the pinnacle of the zeitgeist is, like fashion in general, temporary: “At some point, I’ll be picking the shoe that only the people over 50 will pick.”

Horyn, Cathy. “Critic’s Notebook: As the Dow Falls, Couture Turns Contrarian.” *New York Times*, July 23, 2002.

Report from the couture shows in Paris examines the current creative energies of several top design collections — Jean-Paul Gaultier, Karl Lagerfeld, Christian Dior — and declares the discipline of “making expensive clothes for rich women” is enjoying a vibrant renewal of cultural relevance. The British host of *E!’s Fashion File*, Tim Blanks, offers praise for the practice of haute couture, comparing the experience of an elite fashion show to that of film or music. Dior is praised for adapting “ethnic-inspired street styles” into its new clothing, and Lagerfeld’s Chanel presentation is viewed as “subver-sive” in its mixing of tradition and transgression. In the author’s estimation, ready-to-wear is suffering from creative stagnation due to the demands of a recession-hindered marketplace, meaning that “couture is now where the action is in fashion.”

———. “Critic’s Notebook; I’m Wearing ... Fill in the Blank.”

New York Times, March 25, 2002.

Review-analysis of the red carpet cavorting before the 2002 Academy Awards, when actresses draped in couture from the most expen-sive international designers displayed their choices for the media. Numerous actress-designer combinations are scrutinized, and the author digs beneath the glitz to reveal just how crucial these fleeting moments have become for both creative worlds. The public relations director for Chanel notes that photos of 1993 Oscar winner Marisa Tomei (dressed in Chanel) still circulate in magazines, while a stylist offers an unsettling view of the flipside of the Oscar-night spotlight when she notes that “a lot of actresses are petrified to make a mistake because it doesn’t go away for at least a year.”

———. “Critic’s Notebook; Unabashed Wal-Mart Shopper Speaks.”

New York Times, Aug. 27, 2002.

Insightful, personalized account of the mass-production model of the world’s largest retailer, and how it, “in its own quirky way, seemed to be in sync with what the magazines are showing for fall.” The author, a *Times* fashion editor, recounts her experiences shopping at Wal-Mart and how she often has fooled top fashionistas with her bargain-bin attire. A telephone discussion with senior apparel executives from Wal-Mart’s Arkansas headquarters reveals that, while they are aware of a trend in “cross-shopping” and have increased the fashion-awareness and fitting specifications of several lines, they do not intend to compete with other retailers (Target, Kohl’s) that have made more overt efforts at courting the more discerning, style-

conscious consumer, instead aiming their marketing toward, as one senior VP says, “the guts of this country.”

———. “Is Copying Really a Part of the Creative Process?” *New York Times*, April 9, 2002.

Report concerns the revelation of a “lifting” by Nicolas Ghesquière, the designer for über-hip French couture house Balenciaga, from the deceased San Francisco designer Kaisik Wong. Wong’s angular, multi-fabric vest first appeared in a photograph in the 1974 book *Native Funk & Flash*, which Ghesquière admitted to having seen and copied for his own vest for Balenciaga. The author comments that the practice of plagiarism — be it indirect “referencing” or more blatant reproduction — has long existed in the fashion industry on many levels. This current example is chalked up to “postmodernism” by the costume curator of the Metropolitan Museum of Art; criticized by author Tom Wolfe (who personally knew Wong); and defended by Stanford law professor Lawrence Lessig, a noted advocate of free creative exchange. The online article includes color photographs of both designs.

———. “Sexy Clothes, History Lesson Included.” *New York Times*, March 3, 2003.

Review of the Fall 2003 fashion lines for several Italian-based design houses in Milan concentrates on Tom Ford for Gucci and Miuccia Prada and their creative invocation of past stylistic eras. According to the author, recent global turmoil has caused designers to become more conservative and predictable: “[I]nstead of trying to offer something that responds to, and even counterbalances, the emotional weight of the times, they’ve gone down an escapist chute.” Thus, the new lines by Ford-Gucci and Prada, with their recollection of 19th century Edwardians and 1950s’ high society, respectively, indicate to the author a positive reawakening to the possibilities of creative homage.

———. “Young Stars of U.S. Fashion Can’t Seem to Find Right Fit.”

New York Times, Dec. 7, 2002.

Following the successive shop-closings of several once-promising American designers (Isaac Mizrahi, Todd Oldham, John Bartlett, etc.), the *Times* fashion writer interviews several observers who believe that transformations in consumer demand and entrepreneurial climate within the fashion industry mean that up-and-coming, homegrown designers likely will never reach the level of market dominance that Ralph Lauren, Donna Karan and Calvin Klein held for decades. While designers overseas (and select American ones, such as Marc Jacobs) enjoy strong financial backing from publicly owned conglomerates, U.S. designers are faced with increased competition from trendy discount shops and specialty chains as well as more cost-conscious, better-informed customers.

Iguelzi, R. J. “An Accessory to Crime.” *San Diego Union-Tribune*, Nov. 19, 2002.

Report on the popularity of “purse parties” among upscale suburban women in Southern California includes interviews with a party organizer and seller, attendees-purchasers and representatives of the fashion industry decrying the events. The merchandise sold at these parties is inauthentic, and illegal, as these “knockoffs” are sold with

brand trademarks attached in Tijuana or on the street corners of the Los Angeles garment district. One buyer rationalizes her activity as “almost a spite thing” due to the exorbitant prices of real designer handbags; another does holiday shopping at the parties.

Kaufman, Leslie. “Après Yves, Le Deluge?” *New York Times*, Jan. 20, 2002. Examination of the importance of the celebrity fashion designer to the overall industry and culture, using the retirement of Yves Saint Laurent as a sign of an impending changing of the guard among top designers (many of the more established and popular names have reached retirement age). Several observers (including legendary designers Bill Blass and Oscar de la Renta) examine the issue, and two conflicting perspectives are debated. Blass (interviewed months before his death) generally views designers as “brand names” and insists that, managed properly, a designer’s creative vision can be maintained after retirement. Others claim that, due to the constant change within the industry and, in many cases, the public’s identification with an individual designer’s celebrity, the odds are against perpetuating a designer’s unique style after the individual no longer is involved personally.

Kaufman, Leslie, and Abby Ellin. “The J.Lo Line Hits a Snag On Its Run for the Top.” *New York Times*, June 16, 2002. Report on the initial underperformance of actress-singer-mega-celebrity Jennifer Lopez’s J.Lo clothing line in its first year. The article presents several possible reasons: poor comfort, fit and overall quality; high prices for the juniors market; and lack of coordination during the Christmas 2001 season. Despite criticism from several retailers, other observers (including Russell Simmons of urban-wear trendsetter Phat Farm) believe that Lopez’s venture eventually will succeed, and the authors note that the ambitious “barrio girl meets Brooke Astor” already has lured a top designer away from ex-paramour Sean “P. Diddy” Combs’ Sean John apparel company.

Kaye, Elizabeth. “Cloning Chic.” *Los Angeles Magazine*, Feb. 2001: 44+. Article explores the business strategy of Los Angeles-based designer Allen B. Schwartz, whose self-named apparel company ABS has earned notoriety and financial success — enough for a \$20 million-plus buyout by Warnaco in 2000 — due to its popular replicas of Oscar-night celebrity wardrobes. The author writes, “Call it an egregious act of theft, if you must, but also call it a stroke of brilliance, a marketing gamble emanating from an instinct about who women are and what they want.” Several of Schwartz’s most lucrative garments are discussed, along with a brief overview of fashion’s struggle with design protections. Schwartz defends his design house as more than just a copycat operation, touting its high-quality craftsmanship and increasing celebrity clientele.

Kellogg, Ann, Amy Paterson, Stefani Bay and Natalie Swindell. *In An Influential Fashion*. Westport, CT: Greenwood Press, 2002. This encyclopedia of 19th and 20th century fashion designers and companies focuses on those that made a lasting impact on the industry and on culture in general. The book includes compact biographies, discussion of stylistic innovations, information on business expansion, and, in some cases, illustrations of a designer’s landmark design (i.e., Christian Dior’s “New Look” of the late-1940s). The

overall emphasis tilts slightly toward the American fashion industry, but there are enough international designers and companies to make this a useful general resource.

Kingswell, Tamsin. *Red or Dead: The Good, the Bad, and the Ugly*. New York: Watson-Guption Publications, 1998. Slim volume recounting the history of the British “street fashion” design house Red or Dead, which began as a market kiosk in London during the early-1980s; introduced Doc Martens work boots into the global fashion vernacular; and throughout the 1990s, established a reputation as a bold, controversial, and often culturally trenchant fashion brand that brought punk-rock attitudes into the present and then exploded them. Interviews with founder Wayne Hemingway and his partner-wife, Gerardine, are interposed with a pictorial history of Red or Dead, with an emphasis on the designers’ adherence to a credo of breaking down what they see as the boundaries of fashion: elitism, expense, propriety and political neutrality. In turn, the Hemingways’ fashion line draws inspiration from the culture at large (other designers, music, film, current affairs, personal experiences and, of course, “the street”). Pages 19-20 feature some of Red or Dead’s T-shirt parodies of corporate logos (the Hemingways sold their ownership stock in Red or Dead a year after this book’s publication).

Kuczynski, Alex. “Trading on Hollywood Magic.” *New York Times*, Jan. 30, 1999. Opening with a declaration from the editor of the monthly fashion magazine *Allure* — “Nobody cares about models anymore” — this report examines the widespread changeover from models to celebrities as cover subjects for women’s fashion and lifestyle magazines. Sales figures for 1998 for major magazines with celebrity covers are contrasted with those featuring models, and the results clearly indicate that public interest has changed since the supermodel era of the early-1990s. Cultural critic Neal Gabler opines that models are too one-dimensional for today’s celebrity-obsessed culture, while the onscreen personae and gossip-generating private lives of Hollywood performers give people what the author labels an “illusion of substance.” As in other articles, the success of *InStyle* magazine is cited as a prime agent in this shift from model to celebrity; the author observes this trend has not affected overseas markets, where models still dominate magazine covers.

La Ferla, Ruth. “All Fashion, Almost All the Time.” *New York Times*, March 29, 1998. Report on the influx of new fashion-oriented programming on cable television in the late-1990s, focusing on the E! Entertainment Television network. The article discusses programs such as the make-over show *Fashion Emergency*; the how-to, behind-the-scenes format of *Model TV*; and the more adulatory series *Fashion File* and *Video Fashion Weekly*, along with E!’s most popular fashion excursion, the Joan and Melissa Rivers-hosted awards show coverage. Most of those interviewed believe this growth will endure, as Hollywood continues to embrace fashion and style as crucial elements of contemporary entertainment.

———. “Front Row.” *New York Times*, Jan. 21, 2003. Review of the Golden Globe Awards held in Los Angeles, focusing

on the fashion-conscious, televised pre-show in which actresses wear couture dresses from top international designers and stroll past dozens of photographers as they enter the venue. Actress Laura Flynn Boyle’s faux-ballerina dress is discussed, as is the uncharacteristically reserved tone of traditional red carpet arbiter Joan Rivers. According to the author, rumors of designer payoffs to celebrities in return for adornment surrounded the event, revealing the high-stakes fashion publicity that now is up for grabs at the formerly largely ignored Golden Globes. Just as the Globes now are seen as a gauge of Oscar night revelations, so too are the celebrities’ red carpet fashion choices.

———. “This Star for Rent, Now That Stigma Fades.” *New York Times*, April 8, 2001. “As the line between art and commerce continues to erode,” more entertainers are signing contracts to advertise fashion products than ever before, according to the author. Numerous examples are listed, from the hiring of Jeremy Irons and Milla Jovovich for a major Donna Karan print campaign to the long-term signing of Uma Thurman to cosmetics titan Lancome. This trend is linked to the increased celebritization of fashion in general, and offers further proof that the supermodel era is over. Some critics warn that the overuse of celebrities in product endorsements might spur a backlash, but others see it as the new preferred marketing paradigm, for both performers and products.

———. “Who Stole Fashion’s Show?” *New York Times*, Sept. 12, 1999. Engaging analysis of the diminished impact biannual fashion shows — and high-end fashion designers in general — have on the daily workings of the industry at large, both in terms of affecting economic strategies and establishing current styles. Now, the author observes, the most influential trends in fashion’s cycle more often arise from small boutiques, “fashion titans” such as Donna Karan and Ralph Lauren, Hollywood and the street than from the couturier’s catwalk (Tommy Hilfiger’s then-hot alignment with hip-hop stars is given as fact of this shift). Teri Agins’ recently released book, *The End of Fashion*, is used to support the author’s argument, and Target’s popularity as a source for affordable, mass-appeal style also is discussed. The evidence points to a continuing erosion of the traditional, top-down hierarchy of fashion dissemination; as the president of Nicole Miller observes, “People want fast fashion. They’re not waiting for the runways to find out what these gurus think.”

Laboy, Julio. “Clothiers Bring the Barrio to Japanese Teen Rebels.” *Wall Street Journal*, April 8, 1998. Enlightening report on the mid- to late-90s phenomenon of Japanese youth purchasing Chicano-style clothing from independent, “street-born” Southern California apparel makers. The growth of this trend is conveyed through the rise of Tribal Streetwear, Inc., the most popular of several cutting-edge, populist brands, and cultural reasons for this cross-Pacific transmission also are examined (the clothes are just a part of a larger Hispanic influence that many young Japanese reformulate to build their own “outsider” subculture). In addition, the article explores the cooperative business relationship between streetwear fashion manufacturers; the founders of several companies believe that word-of-mouth exposure can assist the streetwear fashion industry as a

whole in reaching its overseas market more effectively. Lacher, Irene. “Style Wars.” *Hollywood Reporter*, Oct. 22-28, 2002. Like several entries in this bibliography, this report investigates the importance of Oscar night — “the Super Bowl of fashion” — but delves into the pressure-packed event preparation to spotlight a growing rift between designers and stylists for control of what the stars wear. Accusations are levied on both sides: The stylists are piggybacking on the fame of their clientele and have no innate talent, and the designers are succumbing to super-hyped pressure by lavishing stars and stylists with perks, in some cases even paying them to wear their clothing. Rather naively, the author claims the public is “oblivious to the machinations going on behind the scenes.” Lacher’s piece bookends three smaller segments by reporter Polly Wilson that feature illuminating interviews with several successful stylists (including teen-pop dresser Stephanie Wolf); fashion designers (Bob Mackie and others); and costume designers (who provide particular insight into the creative process they must manage while creating a “look” for a particular film).

Malossi, Giannino, ed. *The Style Engine*. New York: The Monacelli Press, Inc., 1998. Featuring over 20 wide-ranging and largely insightful essays, and a unique visual design with numerous striking photographs and illustrations, this book — the result of a collaborative labeled the Fashion Engineering Unit — captures the contemporary fashion industry in all of its hectic appeal. Most of the authors hail from Italy, yet the book’s focus is on assessing fashion as a global phenomenon. Standout essays include: Andrea Balestri and Marco Ricchetti’s economic history of the industry (158-175); Domenico De Masi’s piece on fashion’s creative process (128-133); Ted Polhemus’ essay on post-modern fashion as an instrument of identity creation (72-79); and the Fashion Institute of Technology’s Valerie Steele’s rhetorical exercise, “Why People Hate Fashion” (66-70). Overall, the book presents an ambitious and successful synthesis of diverse intellectual perspectives concerning fashion and its effect on culture.

May, Christopher. *A Global Political Economy of Intellectual Property Rights*. London: Routledge, 2000. Engaging overview of the myriad issues facing the global economy as it relates to the ownership of creative ideas, inventions and designs. The author examines the theoretical underpinnings of intellectual property law and how economic transactions are facilitated through international agreements, the latest being trade-related aspects of intellectual property rights (TRIPS) from the World Trade Organization’s (WTO) inaugural charter. Piracy issues are covered on pages 151-157, and the author provides useful commentary on how the fashion industry deals (or chooses not to deal) with the widespread “knocking off” of designs. He concludes with the following insight: “[T]he coverage of intellectual property needs to be tempered by a fully developed and robust public domain but not completely abolished” (178).

McDowell, Colin. *Fashion Today*. London: Phaidon Press, 2000. Voluminous, discerning overview of the fashion industry at the turn of the millennium that focuses on developments dating from Dior’s

“New Look” onward. The author, a fashion writer for London’s Sunday Times, dissects the industry from several perspectives, each comprising a separate, non-chronological chapter (representative topics-chapters include: “Designer as Superstar,” “Selling the Dream” and “The Lure of Retro”). A staggering array of photographs supplement the textual flow, which, despite its breadth, further manages to illuminate what the author regards is fashion’s positive — even potentially liberating — catalyzing role in postwar culture, as stated in the introduction: “For the first time in history, fashion is now perceived as central to existence by vast numbers of people of all ages and social backgrounds, many of whom have been traditionally excluded from its influence.”

McKinney, Jeffrey. “Rags to Riches.” *Black Enterprise*. Part 4 of a series titled “The Hip-Hop Economy,” Sept. 2002: 98+.

In-depth article on the tremendous growth of several “urban apparel” companies with close ties to the hip-hop music community. Performer-producer Sean “P. Diddy” Combs proclaims that the goal of his fashion line Sean John is “to bring entertainment into fashion,” and his close relationships with numerous celebrities in and out of hip-hop have enabled Sean John’s upscale attire to grab market share from more established designers. Combs, Jay-Z of Rocawear and Russell Simmons of Phat Farm collectively represent “a new breed of hip-hop magnate, who is creating thriving businesses through sartorial innovation, marketing savvy, and star power.” The pioneering urban fashion companies Karl Kani and FUBU also are analyzed, and estimated revenues for 2001 are included for all five design houses.

Mencken, Jennifer. “A Design for the Copyright of Fashion.” Paper included on the Intellectual Property and Technology Forum’s Web site at Boston College Law School, Dec. 12, 1997. [www.bc.edu/bc_org/avp/law/st_org/iptf/articles/content/1997121201.html]

Exhaustively researched position paper argues for the extension of copyright protection to fashion garment designs. The author reaches into the history of the fashion industry to detail how various trademark, patent and trade restrictions have provided a cumbersome framework of protection for fashion products (only the fabric design is copyrightable), and notes that the blurry, subjective distinction between the aesthetic versus utilitarian functions of clothing has kept courts from making a forceful decision on the issue. While the lack of a clear copyright protection for fashion has not hindered the industry’s creative momentum, the author believes the moral rights of artistic fashion designers are usurped habitually by the thievery of copycat manufacturers in the current scenario. Mencken thinks a time-limited, “necessarily thin” copyright protection that includes a licensing system better would serve both consumers and fashion designers.

Moore, Booth. “Redesigning and Redefining the House of Halston.” *Los Angeles Times*, Dec. 27, 2002.

Interview-supported report on the leadership shift at the long-beleaguered Halston design house, where Los Angeles designer and TV personality Bradley Bayou is the new creative director. Discussion centers around Bayou’s successful track record in fashion and entertainment, which is compared with Halston’s rise during the 60s and

70s as “one of the first celebrity-designers” (for Jacqueline Kennedy Onassis, Studio 54, etc.), before the designer and his imprint over licensed and fell into decline in the 80s. Bayou’s designing of couture dresses for Halle Berry and Oprah Winfrey; his stint on daytime television’s *The View*; and his Lifetime program, *Operation Style*, all point to his populist, entertainment-oriented approach that potentially may resuscitate the brand.

———. “Then Again, Yes: With Minis, Shifts and Lean Jackets, Designers Put a Fresh Spin on the 1960s.” *Los Angeles Times*, Feb. 17, 2003.

Report on the Fall 2003 collection fashion shows of several leading designers in New York City begins with commentary on how several lines share stylistic roots in 60s’ culture (particularly Carnaby Street-Swinging London, “mod versus rocker” fashion). Also discussed: Los Angeles designer Jeremy Scott’s homage to Hollywood’s influence with his fashion premiere at the end of the week, which involved filming his models’ displays in one red carpet area and then showing the footage in real time to the audience in a screening room.

Mower, Sarah. “The Talent Club.” *Vogue*, March 2003: 278-294.

“People with an original aesthetic, thinking laterally about the times we live in.” So defined are a group of up-and-coming fashion designers from around the world, a group that “revels in color, beauty, quality, wit, and romance; something altogether different from the rough, oppositional stuff associated with upstart designers through the nineties.” In many cases, this “revolt into glamour” movement draws from cross-cultural influences (one British designer updates the 1960s’ sci-fi Amazon look of Roger Vadim’s *Barbarella*, for instance). Despite the unforgiving economic climate, the author believes that many of these designers have the ingenuity and professional focus to make a lasting international name for themselves.

Mui, Nelson. “Ms. Perfect Opts Out.” *New York Times*, Aug. 19, 2001.

Article employs interviews with several young to middle-age Manhattan fashionistas to explore a larger trend-in-the-making: a “quiet revolt” against upscale, expensive designer clothing and the considerable time it takes daily to create a full-fledged, trendy appearance. Valerie Steele of the Fashion Institute of Technology notes that the increasing focus on celebrities in fashion media has made the general populace more susceptible to fashion conformity, resulting in the formation of an opposition (or, more accurately, an “opting out”) movement of sorts.

Oldham, Todd. *Without Boundaries*. New York: Universe Publishing, 1997.

This book contains a series of interviews with the popular and eclectic designer Todd Oldham, along with visually arresting photographs of his design (primarily fashion, plus some interior decorating and other materials from the 1990s) and essays from friends and admirers. Oldham, interviewed by New York writer Jen Bilik, expounds on his fondness for the mixing of cultures high and low, past and present, local and international; he discusses his formative influences (growing up in Texas and in Iran, “outsider” art, Sears catalogs); and states his belief that creativity is a process of referencing both past influence and a hope for the future together in a current, momentary form (20).

Olivier, Ellen Appel. “Style & Culture: Star Clients Keep Stylists On the Run.” *Los Angeles Times*, Jan. 24, 2003.

Since “the public’s interest in red-carpet attire is insatiable,” observes the author, “for stars, fashion-consciousness is no longer optional.” This report follows one Los Angeles fashion stylist, Fati Parsia, during the Paris haute couture shows as she selects apparel for her A-list clientele to wear during upcoming awards shows and events. Overall, this account provides a concise assessment of the current mutually beneficial interplay between celebrities and couturiers, exemplified by the huge amount of publicity generated by Halle Berry’s Oscar dress in 2002, created by Lebanese designer Elie Saab and chosen for Berry by stylist Phillip Bloch.

Patner, Josh. “Cool as a Cupcake.” *Slate*, June 20, 2003. [www.slate.msn.com/id/2084044]

Online opinion piece assesses New York designer Marc Jacobs, whose popularity as a purveyor of hip sportswear for the high-end consumer market has come to surpass his more rarefied creations for Louis Vuitton in terms of hipster cachet. According to the author, the key to Jacobs’ appeal lies in his willingness to reference past designs — and popular culture in general — with a self-conscious, gleeful panache (making him the “Moby of the runway”). Often erroneously labeled a knockoff artist for the cognoscenti, the author argues Jacobs’ “cultural zeitgeisting” talent instead indicates a redefinition of what makes a modern fashion designer successful, elevating cleverness over innovation and thus “shifting the very standards by which the craft will be judged in the future.”

Piaggi, Anna. *Anna Piaggi’s Fashion Algebra*. Translated by Cecilia Treves. London: Thames & Hudson, 1998.

Massive, visually fascinating anthology of the collage work created by *Vogue* Italia fashion editor Anna Piaggi, covering 10 years of her signature “Double Pages” that appeared in the glamour magazine (selections from 1988-98). Inspired by “the radical simplicity and the natural condition of spreads, of open pages,” each of the “Double Pages” expands on a singular, imaginative concept. Piaggi’s eye for fashion leads to boundless juxtapositions, some more literal than others, nearly all intriguing (the text is in Italian, but a fold-out page at the end of each chapter lists descriptions of each collage in English). Taken as a whole, Piaggi’s oeuvre is a testament to the rapid, unfettered pulse of fashion creativity; nothing is off limits to her and the talents she salutes in every issue. A brief segment closes the book, offering among other items a track listing of one of Gianni Versace’s runway mix tapes from the early-1990s.

Pressler, Margaret Webb. “Who’s Got the Look?” *Austin American-Statesman*, Aug. 27, 1998.

Account of the charges leveled by retailer Abercrombie & Fitch against its chief competitor, American Eagle, in a lawsuit filed in June 1998. Abercrombie & Fitch, then at the height of its popularity as a provider of trendy apparel for teen and young-adult consumers, accused American Eagle of “ripping off” many of its designs, as well as its marketing plan (which featured quarterly catalogs mixing photo spreads, clothing inventory and lifestyle-oriented articles). An industry consultant defends American Eagle by noting that the rapid

adaptation of others’ design elements is a core practice within the fashion industry. A district court ruled in favor of American Eagle, and in February 2002, the Sixth Circuit Court of Appeals upheld the ruling, citing that the “functionality” of A & F’s clothing meant that it couldn’t be protected as trade dress.

Quintanilla, Michael. “Gotta Have It: Magazine’s Team of Savvy Young Shoppers ‘Hot Picks’ Coolest Fashions.” *Los Angeles Times*, Sept. 6, 2002.

Narrative report dissects the fashion picks and pans of a group of “trend spotters” selected by *Teen People* magazine to attend a Magic International trade convention in Las Vegas. In interviews, the selected teens (ages 16 to 20) describe how their style decisions are made: Fit and appearance matter more than cost, and all the biggest influences come from entertainment (music videos, films, celebrities). The young people’s tastes range from mainstream retailers (Target, Abercrombie & Fitch) and new, trendy lines (Sean John) to thrift-store chic. The report notes that during the 2001 economic downturn, teen spending on apparel rose 4 percent from the previous year.

Rochlin, Margy. “Oscar Films/The Show; Taking No Prisoners at the Edge of the Red Carpet.” *New York Times*, March 4, 2001.

Profile of E! Entertainment Television’s awards show fashion critic Joan Rivers briefly recounts her pre-E! career as a standup comedian and failed Johnny Carson rival in late-night television, but mainly focuses on her relationship with both the entertainers with whom she interacts and her large (for cable) fan base. Regarding Hollywood’s recent conservatism on the red carpet, Rivers says, “I want everybody to look pretty, but I am always praying for at least one tramp.”

Schoolman, Judith. “Calvin Klein’s Sew Mad: Designer and Partner in Rag Trade Legal Battle.” *New York Daily News*, Jan. 14, 2001.

Report on the acrimonious litigation between designer Calvin Klein and apparel manufacturer Warnaco, (which was settled days later, just before the trial was set to commence). Designer Klein alleged that Warnaco, which had licensing rights to Calvin Klein jeans and underwear, “diluted” the brand by shipping clothes to discount retailers such as Sam’s Club and Costco. Such practices are “the equivalent of counterfeiting,” said then-Calvin Klein CEO Barry Schwartz when the suit was filed in the spring of 2000.

Seabrook, Jack. “A Samurai In Paris.” *New Yorker*, Mar. 17, 2003: 100+.

Profile of *International Herald Tribune* fashion editor Suzy Menkes, who has covered couture for the newspaper since 1988. Widely regarded as one of the most knowledgeable and influential commentators on fashion, Menkes reflects on her personal history; discusses her relationships with designers both established and up-and-coming; and comments on the overall state of the industry, saving her most cutting criticism for more recent developments that have endangered the “artistry” and exclusivity of couture (American fashion’s overemphasis on celebrity coverage, for example). The author, a cultural critic who penned the marketing exposé *Nobrow*, also makes several astute observations about the transformation of the global fashion industry in the 1990s.

Steele, Valerie. *Fifty Years of Fashion*. New Haven: Yale University Press, 1997.

Concise, accessible overview of global fashion from Dior’s “New Look” to the trends of the mid-1990s. The author does not attempt to provide a comprehensive history but instead offers an opinionated assessment of prevalent styles, trends and designers through the decades, as well as noteworthy commentary on Dior’s popularity in the 1950s; Balenciaga’s enduring influence; the 60s’ “Youthquake”; the rise of licensing; 70s’ “anti-fashion”; and Karl Lagerfeld’s tenure at Chanel during the 1980s, among other topics. Representative photographs from each era are interposed with apparel from the museum collection of New York’s Fashion Institute of Technology, where Steele serves as director.

Tagliabue, John. “Fakes Blot a Nation’s Good Names.” *New York Times*, July 3, 1997.

In-depth report on the preponderance of counterfeiting in Italy, focusing on the leather goods sector of the fashion industry as well as consumer electronics. Ironically, the author observes, many of the fake Prada and Dior handbags currently disseminated world-wide were crafted by the same people responsible for the original, commissioned articles, resulting in a near-perfect verisimilitude that makes them far harder to detect — and potentially far more devastating a problem — than Asian-made counterfeits. The communal, “entrepreneurial” nature of many Italian shop workers and crafts-people results in an environment that values steady employment and local benefits over the intellectual property demands of distant corporate entities, say several experts, who also note that Italy has less stringent legal safeguards against piracy than other EU nations.

Tkacik, Maureen. “The Return of Grunge.” *Wall Street Journal*, Dec. 11, 2002.

The MTV-sanctioned arrival of pop and rock music performers Avril Lavigne and The Strokes, among others, signifies a return to “grunge”-like fashions for retailers and designers, according to the author. The brief, early-1990s grunge fad, spurred by the popularity of rock bands such as Nirvana and Pearl Jam (whose members collectively embodied a thrown-together, denim- and flannel-saturated fashion image), now is due for a revival of sorts, since the teenage and 20-something fans of these new artists were of elementary-school age when the first wave of grunge fashion hit. This more “authentic” and street-savvy movement may be a reaction to the prefabricated pop music and fashions of teen idols such as Britney Spears and NSYNC, and the author notes that some popular retail stores (such as Abercrombie & Fitch) have been impacted negatively by the grunge semi-revival due to their concentration on more staid, “preppy” designs.

Trebay, Guy. “From Milan, Soccer Cowboys.” *New York Times*, June 29, 2003.

Report on the Winter 2003 fashion collection shows from Milan notes the current penchant for stylistic references to past eras by designers such as Tom Ford for Gucci, whose rugged, “wrangler”-esque Western wear is well-suited for a younger, sexier, trendier George W. Bush, according to the author. Other design houses, from Prada to

Fendi to Calvin Klein, also feature Western motifs in their new lines, while Dolce & Gabbana’s new apparel trends toward attracting the “metrosexual” or David Beckham (U.K. soccer star-celebrity) demographic. The DSquared fraternal twin team constructed a 1950s’ “Happy Days” set for their collection, which “wittily” references late-1950s’ to early-1960s’ American pop culture in its styles (James Dean, Thunderbirds, early Beach Boys).

———. “London: The Town That Would Be King Again.” *New York Times*, Nov. 19, 2002.

“As it happens, plurality may be the news from fashionable London, as the design scene here evolves beyond the stale and often monolithic nature of the apparel trade.” So begins this account of fashion trends in a formerly dominant global center, which is now an incubator for upstart designers intent on creatively challenging what they regard as the stagnation of the elite global superpowers. These bohemian designers in the East End and brash, politically edgy boutiques dispersed in and around the Soho district already have captured the attention of several major designers, as well as valuable support from names in both mainstream celebrity (football’s David Beckham) and the cutting-edge, underground (“electroclash” musicians).

———. “What’s Stonewashed, Ripped, Mended and \$2,222?”

New York Times, April 17, 2001.

This analysis of the importance of denim jeans in the fashion industry briefly recounts the history of blue jeans in U.S. fashion: their origin in the California gold rush era; their mass acceptance post World War II, particularly within youth culture; and the designer-jeans boom in the 1970s, etc. The author spends more time analyzing the recent inclusion of denim into the lines of several high-end designer collections (such as Britain’s Stella McCartney and New York’s Marc Jacobs). Most of these jeans are intentionally ripped or otherwise roughed up in order to create an artificially unique history for each garment (Dolce & Gabbana’s most “authentic” version retails for over \$2,000).

Trebay, Guy, and Ginia Bellafante. “Prada: Luxury Brand With World-Class Anxiety.” *New York Times*, Dec. 18, 2001.

Report on the expansion of the Prada empire into several vast, architecturally unique superstores around the world, and the overall surge in acquisitions that has threatened to over saturate the market with what once was regarded as an exclusive, luxury brand. The conflicting goals of “reaching a broad market” and “also retaining the intrinsic cachet of being the cognoscenti’s chosen brand” are discussed, and several observers of Prada’s ambitious strategy believe the brand has placed so much financial stake in the mass market that it has no choice but to forsake its elite aura (a poll cited from *Women’s Wear Daily* found that Prada did not place in the Top 100 most recognizable international fashion brands).

Troy, Nancy. *Couture Culture*. Cambridge, MA: MIT Press, 2003.

The author states in the introduction: “My interest in haute couture lies in the contradictions engendered by its production of supposedly unique garments for elite clients and multiple copies for mass consumption.” Using the early-20th century career of successful French couturier Paul Poiret as a guide, Troy examines the tension

between artistic aspirations and commercial concerns that the exclusive realm of haute couture faced as its influence spread across the world, and especially into the mass-market wonderland of America. Poiret’s struggles with this dichotomy after he found his designs were being widely copied in America — his attempts to instigate changes in U.S. copyright law, his introduction of his own line of “genuine reproductions” — are contrasted with Marcel Duchamp’s provocative “readymade” art from the same period, which isolated and imbued functional, everyday objects with aesthetic qualities. The author also covers other designers and issues of the era in this exhaustively researched, finely illustrated study (in particular, U.S. and French intellectual property laws of the 1910s and 1920s are analyzed and compared in Chapter Three).

Wellington, Elizabeth. “From Shady Beginnings, Knockoffs Rise to Respectability and Big Profit.” *Pittsburgh Post-Gazette*, Nov. 7, 2002. Brief article on the increasing popularity of “knockoff” fashion apparel focuses on merchandise sold over the Internet. Several young, trend-conscious consumers explain their decision to down-scale (due primarily to the economic downturn and the improvement in knockoff design quality), and the owners-operators of a popular knockoff Web site reflect on the origins and growth of their business (born out of the mass Internet-related layoffs of 2000-2001). A trend-watcher in New York notes that knockoff merchants are making money off of the talent and creativity of couture designers.

White, Constance. “A Casual Revolution is Heating Up.” *New York Times*, Feb. 27, 1996.

Report on the movement away from high-end couture within the designer community as a result of the growing popularity of casual wear, particularly in America. Citing the influence of *Friends* characters’ fashions, the author observes there is a “sea change” underway in style, one in which designers must accommodate their customers’ desire for more comfortable, versatile-yet-trendy apparel by shoring up their lower-priced lines. Designers Gianni Versace and Donna Karan are interviewed and both express approval of this cultural shift.

———. “The Rise of the Stylist: A Double-Edged Sword.” *New York Times*, Sept. 1, 1998.

Article examines fashion stylists’ growing stature within the industry,

highlighting the interrelationship between stylist and designer on a designer’s clothing line in terms of overall presentation. Several interview subjects are critical of the stylists’ responsibilities, stating that stylists’ commitment to establishing hip, international trends dilutes competing designers’ unique creative visions and results in far-too-similar collections. Hollywood’s and celebrities’ increased prominence in 90s fashion is discussed as a contributing factor to the stylists’ newfound decision-making power.

Wilson, Elizabeth. *Adorned in Dreams: Fashion and Modernity*. Berkeley: University of California Press, 1985.

For the author, 20th century fashion is a central component in self-creation, a way for people to “express and define their individuality.” Wilson analyzes fashion as a by-product of modernity and capitalism, inextricably linked to the rise of the metropolis and susceptible to exploitation. However, she also envisions fashion as a “kind of connective tissue of our cultural organism,” and a source for much pleasure and creativity. The author devotes individual chapters to such topics as: the economics of the industry, fashion and sexuality, fashion and feminism and fashion in popular culture. In Chapter Three, “Explaining It Away,” she examines several well-known theoretical approaches to fashion, from Thorstein Veblen’s early-20th century consumerist critiques to Jean Baudrillard’s postmodernist assesment to Roland Barthes’ influential semiotic analysis. Wilson argues that previous theories on fashion too often overlook its important aesthetic appeal; her own perspective draws from the ideas of such critics of modernity as Walter Benjamin, Marshall Berman and Fredric Jameson.

Yokogawa, Joselle. “Steady Rockin’.” *California Apparel News*, Feb. 7-13, 2003.

Trade publication interviews two veteran street performers, break-dancers Crazy Legs and Easy Roc of the Rock Steady Crew, about their observations on current underground or “street” fashion trends. Both liken the creativity and fluidity of fashion to that of dance and music, especially hip-hop and punk. Each is outfitted in a photo layout with apparel from designers that also was featured in the March 2003 Magic International industry showcase. ♦

AUTHOR BIOGRAPHY

PATRICK REED

Patrick Reed has contributed to several projects for the Norman Lear Center, including “The Tyranny of 18 to 49” and “Ready to Share.” He has worked for a variety of businesses and non-profits since the late-1990s as a writer, researcher, film critic, copyeditor and video producer. He received a B.A. in telecommunications with a concentration in film studies from the University of Kentucky and an M.A. in popular culture from Bowling Green State University in Ohio. He lives in Frankfort, Kentucky. ♦



▶
Tom Ford.

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